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HEARING

IN THE MATTER OF:

SATELLITE RATE ADJUSTMENT

DOCKET NO.

96-3 CARP-SRA

Thursday,
March 20, 1997CARP Hearing Room LM414
Library of Congress
101 Independence Ave., S.E.
Washington, D.C. 20540

The above-entitled matter came on for hearing,
pursuant to notice, at 9:30 a.m.

BEFORE:

THE HONORABLE LEWIS HALL GRIFFITH, Chairperson

THE HONORABLE JOHN W. COOLEY

THE HONORABLE JEFFREY S. GULIN

NEAL R. GROSSCOURT REPORTERS AND TRANSCRIBERS
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David Hummel, Witness
Marsha Kessler, Witness
Robert W. Crandall, Witness
Allen R. Cooper, Witness

C-O-N-T-E-N-T-S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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Robert Crandall

By Mr. Glist		1343		1460
By Ms. Behan			1439	
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By Ms. Herrera		1437		

Alan Sternfeld

By Mr. Ossola	1468		1585	
By Mr. Glist		1515		
By Mr. Stewart		1569		
By Mr. Garrett		1578		

E-X-H-I-B-I-T-S

<u>Exhibit No.</u>	<u>Description</u>	<u>Mark</u>	<u>Recd</u>
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SBCA

23-X	Crandall Testimony Transcript	1376	
24-X	New York Times Commentary	1524	
25-X	Video: Piece from NBC carried carried by Prime Time 24	1539	
26-X	"Broadcasting" Article	1564	

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P-R-O-C-E-E-D-I-N-G-S

(9:32 a.m.)

CHAIRMAN GRIFFITH: Ladies and gentlemen,
good morning.

All right. Let the record reflect,
please, that the Court Reporter has been previously
sworn and remains under oath, and the witness, Dr.
Crandall, has previously been sworn and, likewise,
remains under oath.

Mr. Glist?

MR. GLIST: Thank you.

WHEREUPON,

ROBERT CRANDALL

was recalled as a witness by Counsel for the Office of
the Commissioner of Baseball and, having been
previously duly sworn, resumed the witness stand, was
examined and testified as follows:

CROSS EXAMINATION

BY MR. GLIST:

Q Good morning, Dr. Crandall.

A Good morning.

Q I'm Paul Glist. I represent the Satellite

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1 Carriers in this proceeding.

2 You have done work for Telecommunications,
3 Inc., TCI?

4 A Yes.

5 Q And you've also done work for the National
6 Cable Television Association, NCTA?

7 A Yes, I believe briefly once.

8 Q You also published a book on cable
9 television last year?

10 A Yes.

11 Q You have an understanding, I believe, of
12 the satellite compulsory license that is at issue in
13 this proceeding?

14 A I have, yes, a rudimentary understanding
15 of it, I suppose.

16 Q And you have an understanding of the cable
17 television compulsory license as well?

18 A Yes.

19 Q Do you understand how cable operators
20 negotiate with cable networks?

21 A I understand that they do. I have never
22 actually studied that process.

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1 Q So you haven't participated in that
2 particular negotiation?

3 A No, I have not.

4 Q But you have an understanding of the basic
5 economics of business involved in that?

6 A Yes, I do.

7 Q And you have an understanding, don't you,
8 of related industries like advertising?

9 A Minimal understanding of advertising, yes.

10 Q Do you know the regulatory history of the
11 satellite industry?

12 A Not entirely. I have not studied that
13 carefully.

14 Q How about of the cable industry?

15 A I have studied that more carefully over
16 the years.

17 Q And broadcasting?

18 A Yes.

19 Q Do you know much about the ownership
20 arrangements of cable networks today?

21 A I have looked at it. I know something
22 about it, sure.

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1 Q Isn't it correct that the three commercial
2 networks -- ABC, NBC, and CBS -- have ownership of
3 certain basic cable networks?

4 A Yes, they certainly have ownership
5 interest in cable networks.

6 Q So NBC, for example, has an interest in
7 CNBC and MS-NBC?

8 A That's correct. I believe that's correct.

9 Q Now, do you know whether CNBC used to be
10 known as America's Talking?

11 A I don't remember the history. There was
12 a merger there, too, so -- F&N, I believe. But I
13 don't recall the earlier names of the networks.

14 Q Is America's Talking a name that is
15 familiar to you?

16 A I don't remember it, frankly.

17 Q How about ABC -- ABC has an interest in
18 ESPN, doesn't it?

19 A I think that's right, yes.

20 Q And ESPN-2?

21 A If they have an interest in ESPN, they
22 would have an interest in ESPN-2.

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1 Q And CBS -- didn't they just recently
2 acquire The Nashville Network and Country Music
3 Television?

4 A Again, I'm not up to date with recent
5 acquisitions. They were one of the reluctant players
6 in that market for a while.

7 Q Do you know whether they are a player in
8 that market today?

9 A It seems I have read something in the last
10 few weeks that they are becoming more aggressive, but
11 again, I haven't kept up with that.

12 Q When a basic cable network like ESPN sells
13 to a cable television system, it delivers all of the
14 necessary copyrights to that cable system, is that
15 correct?

16 A That's my understanding.

17 Q And that's true for each of the basic
18 cable nets, isn't it?

19 A I think so.

20 Q Is it fair to say that the basic cable
21 nets are typically arranged for a dual revenue stream?

22 A They historically are arranged for a dual

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1 network stream? Define dual network stream, I guess.

2 Q A basic cable network is partially
3 supported by the sale of advertising and partially by
4 direct payment by subscribers or cable affiliates?

5 A I think a better way of saying it is it
6 may be supported. Some are supported; some are not
7 supported by advertising.

8 Q How about ESPN?

9 A I think ESPN is certainly supposed by
10 advertising as well as fees.

11 Q For a service like that, do you know
12 whether there is a certain ratio? Is ESPN 100 percent
13 advertiser supported? 50? 10?

14 A I don't know what the ratio is, but I
15 don't think it's 100, because they do have affiliation
16 fees.

17 Q But some portion of it is advertiser
18 supported?

19 A Yes.

20 Q Do you know whether it's a substantial
21 portion?

22 A I would suppose it's a substantial

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1 portion, but there are numbers on these things, which
2 I haven't looked at recently.

3 MS. BEHAN: I'm going to object to the
4 scope of this examination. I hope that he'll tie it
5 in. I don't think, though, that we've put him up as
6 an expert on intricacies of each one of the cable
7 nets.

8 On the other hand, if he has the knowledge
9 and wants to answer it, I am happy to have him do
10 that. But if it goes too far beyond the scope of his
11 testimony or expertise, I'll raise a further
12 objection.

13 CHAIRMAN GRIFFITH: All right.

14 BY MR. GLIST:

15 Q When a cable network reaches an agreement
16 with a cable system operator, is it the cable
17 network's responsibility to deliver the signal to the
18 cable head end?

19 A Well, it's on the satellite. And,
20 therefore, it's available to the cable head end by
21 simply receiving the beam from the satellite,
22 typically.

1 Q Do you know how it happens to be on the
2 satellite?

3 A Well, it's uplinked by -- the network
4 arranges to be uplinked to the satellite, to a
5 transponder on the satellite.

6 Q Okay. So ESPN, for example, would arrange
7 to uplink to a satellite?

8 A That's my understanding.

9 Q And then the cable operator would --

10 A Right.

11 Q -- take it down at his own dish?

12 A Right.

13 Q So the cable operator is not the one who
14 is obtaining a satellite or obtaining transponder
15 time?

16 A Not for his MSO, typically. Typically, he
17 has a receive only dish.

18 Q Now, for a long time, wasn't there a
19 federal restriction against pay television?

20 A Well, there are FCC rules on pay
21 television and pay cable, all or part of which were
22 invalidated in 1977 by the HBO decision as I recall.

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1 Q And since that decision, did the number of
2 cable networks begin to grow?

3 A Yes, but that decision involved premium
4 networks, not just basic networks.

5 Q By "premium network," do you mean a
6 service like HBO?

7 A Yes, a per channel service.

8 Q And those are --

9 A They're billed per channel, yes.

10 Q Those are distinct from basic cable nets?

11 A Yes.

12 Q HBO is typically commercial free?

13 A You know, I don't know the answer to that.
14 I hadn't thought about it, because I don't watch HBO.

15 Q When we look at a broadcast network, for
16 example, or the broadcast business, is it fair to say
17 that that business is organized largely around
18 advertiser support?

19 A When you talk about the broadcast
20 business, do you mean the business of distributing
21 signals by local transmitters off air to household?

22 Q Yes.

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1 A Yeah. Traditionally, that was supported
2 by advertising, because there was no pay television as
3 such.

4 Q And do you know when a broadcast station,
5 for example, buys programming to air, do they buy all
6 of the copyrights in that programming in perpetuity,
7 or do they buy something less?

8 MS. BEHAN: I'm going to object to the
9 question, and the reason I'm going to object is what
10 Mr. Glist has done is to go in at the start of this
11 examination and ask the witness whether he has a lot
12 of different expertise in a lot of different areas
13 that he didn't testify on. He is now making a series
14 of points, which it appears to me what he is doing is
15 he's going at and developing the themes in his case
16 through our witness, who happens to have a lot of
17 areas of expertise relevant to it.

18 But so far, he hasn't tied anything into
19 the concept of fair market value. I'm waiting, and
20 I'm going to be patient, but I object and I'd like for
21 him to proffer how he is going to tie this in, or
22 maybe I'll just wait for him to tie it in. But I'm

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1 not going to let this go much further.

2 CHAIRMAN GRIFFITH: Do you want to move
3 on?

4 MR. GLIST: Well, if this is an objection,
5 the witness has testified that transactions between
6 cable networks and their affiliates is an arrangement
7 to look at, and I am trying to determine how that
8 arrangement operates and how it might contrast with
9 other television market arrangements that might also
10 serve as a model. It will take some time to tie all
11 of this together, but believe me, I will.

12 CHAIRMAN GRIFFITH: To the extent that
13 you've objected, you are overruled.

14 (Laughter.)

15 BY MR. GLIST:

16 Q The outstanding question, sir, do you
17 remember --

18 A Oh, there's a question? I'm sorry. No.
19 Go ahead and repeat it, if you would, please.

20 Q Do you know whether a broadcaster, when
21 obtaining license programming, obtains all of the
22 copyrights to that programming for all uses in

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1 perpetuity?

2 A It's my understanding -- well, first of
3 all, broadcasters obtain their programming in at least
4 two ways. I mean, one, they may have an affiliation
5 agreement with a network, in which case the network
6 which has obtained copyrighted programming will beam
7 that programming to the broadcast station under agreed
8 terms. The duration of those affiliation agreements
9 used to be subject to regulation. Whether it still
10 is, I don't know.

11 In addition, broadcasters obtain
12 programming from syndication, which they negotiate
13 directly with distributors of that programming, and
14 presumably have the copyrights. And they obtain
15 rights to those programs to air them under specified
16 conditions. I would be surprised if any of these
17 rights extend in perpetuity.

18 Q Based on your understanding of the
19 syndication marketplace, for example, would a
20 broadcast station be likely to obtain the rights to
21 both broadcasted over-the-air in a DMA for free, and
22 also to license other technologies for that same

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1 product?

2 A I think that's unlikely, but things may
3 have changed in recent years since I last looked at
4 it. That was not the practice, to my understanding,
5 a few years ago when I last looked at it.

6 Excuse me. Could I amend my last answer?
7 When you said "broadcast," I meant a local
8 broadcaster. A network may obtain the rights to a
9 program and exploit it in a variety of other markets,
10 but I was referring only to broadcaster, you know, a
11 local broadcaster.

12 Q Do you know whether networks, when they
13 obtain programming for the network airing, also obtain
14 rights for other technologies?

15 A Well, as you probably know, there has been
16 a lengthy regulatory process, a litigation process,
17 involving antitrust laws over the network's right to
18 acquire these interests. It was a period of I think
19 more than 20 years in which they are forbidden to
20 acquire many of those ancillary rights, but now they
21 are able to do so again and probably do so.

22 Q Do you know whether they have done so?

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1 A I haven't looked at it. I worked for the
2 networks on freeing them from this restriction, but
3 since the restriction has been lifted, I have not done
4 any work on that. And, therefore, I haven't looked at
5 it.

6 Q Let's take a look at the basic cable
7 network signal coming off of a satellite through a
8 cable system head end. A signal like ESPN, for
9 example, would have advertising within the programming
10 that is coming down from the satellite, is that
11 correct?

12 A That's my understanding.

13 Q And when a signal goes from the cable head
14 end up to a cable subscriber, is it fair to say that
15 that signal would include advertising that is inserted
16 by ESPN and some ads inserted by a cable television
17 operator?

18 A That's a very typical arrangement.
19 Exactly how that works for ESPN per se, I don't know.
20 I've never looked at it.

21 Q But for basic cable nets?

22 A Yes. There are both types of advertising,

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1 correct.

2 Q And a cable television operator might
3 actually have a sales department to sell advertising
4 in a market?

5 A I would presume so.

6 Q Are you familiar with the term
7 "clustering"?

8 A In what regard?

9 Q In the regard of a cable operator trying
10 to assemble properties within a single DMA.

11 A Yes.

12 Q And what does "clustering" mean, sir?

13 A Exactly what you just said. Namely, try
14 to assemble continuous cable operations.

15 Q And does clustering provide an opportunity
16 to sell advertising in the DMA?

17 A I suppose it does, though I had assumed
18 that more recently clustering was designed to
19 accomplish another purpose.

20 Q That other purpose being to structure
21 oneself similar to a LATA?

22 A Yes, to structure oneself to be able to

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1 deliver other services, such as local telephony.

2 Q But does it provide the opportunity to
3 sell advertisers a DMA?

4 A Well, to the extent that a cable operator
5 is a more dense presence in any particular
6 metropolitan area, I suppose it makes its advertising
7 reach more attractive and allows it to economize on
8 trying to sell advertising per exposure.

9 Q Would it be fair to say that in the last
10 five years, for example, that cable television
11 multiple system operators have swapped properties in
12 order to advance their clustering?

13 A Yes. I think there has been an
14 acquisition and swapping movement. Not just swaps,
15 but acquisitions, which have been designed to do that.

16 Q Are you familiar with the term
17 "advertising interconnect" in the cable industry?

18 A No, I am not.

19 Q Do you know whether cable operators who
20 are not commonly owned but exist in the same DMA ever
21 make arrangements to sell advertising time jointly?

22 A I wouldn't be surprised about what they

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1 do, but I'm not familiar with how they do that.

2 Q You've been around the cable industry for
3 a long time, I believe.

4 A I've been a student of the cable industry.
5 I don't hobnob at cable industry meetings, but I've
6 been a student of it, yes.

7 Q Do you know whether cable television
8 operators always sold time, advertising time?

9 A Always? I doubt that the word "always"
10 would be accurate. As they became a large enough
11 presence to do so, and had programming in which they
12 could sell advertising, I suspect they began to do it.
13 But I don't know when it began. It began slowly, I
14 think, and then picked up after the development of
15 basic networks.

16 Q So they had to assemble an audience, and
17 they had to assemble product in which to sell?

18 A Correct.

19 Q And that product is the basic cable net?

20 A Yes. Yes. Among other things. I mean,
21 I suppose they have advertising in some of their own
22 local programming, but certainly the basic nets would

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1 be the most important locus of that.

2 Q Do you know what the dollar volume of
3 local cable advertising sales is today?

4 A No, I don't. I am about two years away
5 from writing the last draft of that cable book, so I
6 haven't been looking at those things. To the extent
7 that I knew it, I have purged it from my memory.

8 Q Do you think that it would be over a
9 billion dollars?

10 A Total --

11 MS. BEHAN: Objection.

12 CHAIRMAN GRIFFITH: Would that call for
13 speculation, do you think?

14 MR. GLIST: He has written a book on it.
15 If I can get a sense of range, that's what I'm trying
16 to obtain.

17 MS. BEHAN: I'll let him answer the
18 question.

19 CHAIRMAN GRIFFITH: Okay.

20 MS. BEHAN: But I do think it calls for
21 speculation.

22 THE WITNESS: Well, there are 60-odd

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1 million cable subscribers, and that would only require
2 \$16 per subscriber per year. So I would suspect that
3 the cable advertising exceeds a billion dollars a year
4 now.

5 BY MR. GLIST:

6 Q Have you ever heard broadcasters express
7 concern that cable television operators are
8 competitors in the advertising business?

9 A Again, not only do I not hobnob at the
10 cable conventions, but nor do I spend much time with
11 broadcasters. They probably have such complaints, but
12 I don't -- I have not heard them.

13 Q When advertisers seek to place their ads,
14 do they frequently try to target specific
15 demographics?

16 A Well, my understanding of broadcast
17 advertising, mostly derived from studying broadcasting
18 a number of years ago, is clearly different
19 demographic groups are more valuable. Those in the
20 35- to 49-year old range, or whatever it now is among
21 the audience ratings, were always considered --
22 especially -- and particularly the males, as the most

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1 valuable component of audiences. Whether that has
2 changed or not I don't know.

3 Q So an advertiser who wanted to target
4 these prime age males, for example, might be attracted
5 to advertise on ESPN?

6 A I suppose, yes. My wife doesn't watch
7 ESPN very much, so I suspect -- and I do. So yeah,
8 although I'm outside the prime age, I have to tell
9 you.

10 (Laughter.)

11 Q We don't need that admission.

12 A That's okay.

13 (Laughter.)

14 Q Certain cable networks have been described
15 as niche programming. Have you heard that term?

16 A Sure.

17 Q What does that mean to you?

18 A It means appealing to a narrow group in
19 the population's interest -- the golf channel or a
20 fishing channel, or something like that. A narrow
21 group of people who would be very interested in a
22 particular type of programming, but who are a

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1 relatively small percentage of the population.

2 Q So if an advertiser wanted to reach that
3 narrow niche of an audience, might that advertiser be
4 attracted to advertise on a particular cable network
5 program for that audience?

6 A Sure.

7 Q So let's take Lifetime, for example. Is
8 it fair to say that Lifetime has positioned itself as
9 a basic cable network that appeals to women?

10 A I guess. I don't know much about Lifetime
11 per se.

12 Q Well, how about Nickelodeon?

13 A With children, yes.

14 Q Yes.

15 A Yes, I'm sure.

16 Q To tap into the purchasing power of our
17 children.

18 A Right.

19 (Laughter.)

20 Or their parents.

21 Q So if an advertiser wanted to reach a
22 discrete set of demographics, a cable operator

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1 carrying an array of niche channels might be able to
2 target those demographics with fairly fine tuned
3 programs?

4 A Yes. As long as programming is designed
5 that way, in any medium that would be true.

6 Q In fact, it might even be possible to
7 design a channel like Home & Garden channel, which
8 focuses on an audience of home improvers, wouldn't it?

9 A I guess there are such already, yes, on
10 cable.

11 Q Do you know whether advertisers who might
12 seek to reach the home improvement community have
13 traditionally relied on television or print?

14 A No.

15 Q So having a collection of basic cable
16 networks also presents the cable television operator
17 with the ability to deliver audiences for advertisers.
18 Is that a fair summary of where we are?

19 A Well, certainly, to the extent they appeal
20 to people who otherwise wouldn't be watching
21 television, or they attract more people to watching
22 cable, sure, and then deliver audiences for

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1 advertising purposes.

2 Q And you can deliver rather specific
3 audiences if the cable network has been designed with
4 that audience in mind?

5 A Yes.

6 Q So in a cable transaction between a cable
7 system and a cable network, a cable operator would
8 account for the advertising possibilities associated
9 with those particular cable networks, wouldn't they?

10 A Certainly.

11 Q And a sophisticated cable system could
12 even select programming based upon the demographics he
13 was specifically trying to reach?

14 A Yes.

15 Q And this presents the cable operator with
16 the opportunity to match advertisers with audiences?

17 MS. BEHAN: Objection. This question has
18 been asked about 10 times and answered every single
19 time. And we're a half hour into this, and we haven't
20 gotten to the point of this one line of examination.
21 Asked and answered is my objection.

22 CHAIRMAN GRIFFITH: Do you have any

1 response?

2 Ms. Woods?

3 MS. WOODS: Excuse me, Your Honor. We
4 just are having trouble hearing Ms. Behan.

5 MS. BEHAN: I'll speak up.

6 CHAIRMAN GRIFFITH: Can you speak louder,
7 please?

8 MS. BEHAN: Asked and answered. That's my
9 objection.

10 CHAIRMAN GRIFFITH: Yeah. I think the
11 objection is sustained.

12 BY MR. GLIST:

13 Q Are you familiar with the terminology
14 within the cable industry of subscriber revenue and
15 third party revenue streams?

16 A I haven't heard the term third party
17 revenue streams.

18 Q Have you heard the term advertising
19 revenue streams?

20 A Sure. Sure.

21 Q Would the ability to tap into third party
22 revenue streams affect a cable operator's negotiation

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1 with a cable network?

2 A I would think so, yes.

3 Q Let's look for a moment at a broadcast
4 signal that is carried on a cable system. Is it fair
5 to say that those broadcast signals have not been
6 programmed to satisfy cable operator needs?

7 A Not necessarily.

8 Q How would you characterize the programming
9 decisions of a broadcast station?

10 A Well, to the extent that a broadcast
11 station is a superstation, and may obtain a very large
12 percentage of its revenues in a national advertising
13 sense, it may be programmed in part to reflect the
14 signal carriage by cable systems.

15 Q I see. You're saying that, in part, a
16 superstation could adapt its programming to serve a
17 larger market than its local DMA?

18 A Yes.

19 Q And as a model of that, might we look at
20 WTBS?

21 A Well, since that is the largest
22 superstation, that would be the ideal one to look at,

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1 I suppose.

2 Q Are you familiar with how WTBS changes its
3 advertising for the satellite market?

4 A No, I'm not.

5 Q Would it surprise you at all if you were
6 to learn that WTBS substituted national advertising
7 for local advertising for the uplinked signal?

8 A Not at all.

9 Q That would be a rational economic move?

10 A That would be a rational economic move.
11 I'm not sure what regulations on that are today, but
12 as long as it was legal, sure.

13 Q But if one turns to a passive
14 superstation, a superstation that in theory is being
15 uplinked against its will, would it be fair to say
16 that that station is making its programming decisions
17 to meet the needs of the local DMA?

18 A Well, there's doing it against its --
19 whether it's being uplinked against its will or not,
20 I guess the issue would be whether it is profitable to
21 consider the effect of your programming decisions
22 outside your own DMA. If you're a signal which

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1 derives most of its audience from within your own DMA,
2 I suspect you might not take those external market
3 forces into account.

4 Q So a broadcaster always has the
5 opportunity to look at its actual audience outside the
6 DMA and to make the rational economic decision?

7 A That's my understanding, yes.

8 Q Are you familiar with how cable operators
9 package basic cable nets to their subscribers?

10 A I guess it would be better to say I was
11 familiar with it. As we were writing our book in
12 '93/'94, we were going through the initial regulations
13 under the 1992 Cable Act, and that led to a lot of
14 retiering. And how that has finally all worked out,
15 I have lost track of. But it certainly changed the
16 way in which various networks are packaged and the
17 development of a la carte, and all of those things.

18 Q Do you know whether cable operators
19 typically package services into groups called tiers or
20 packages?

21 A Sure.

22 Q They do?

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1 A Yes.

2 Q Why would a cable television operator
3 package these cable nets rather than selling them one
4 by one?

5 A Well, there are a variety of reasons for
6 this, and that is it depends on what the consumer
7 demand is. There's various ways of exploiting
8 different types of consumer demand, by offering
9 various types of packages, including a la carte. But
10 you've got to overlay on top of that the regulatory
11 regime. Clearly, the 1992 Act had a lot to do with
12 how they package them.

13 Now, as the price regulations of the 1992
14 Act are phased out through, what, 1999 with the 1996
15 Act, then we'll be back to the packages reflecting
16 their perception of how they're planning to maximize
17 their revenues.

18 Q Do the price regulations on basic phase
19 out in 1999?

20 A No. I guess they don't. You're testing
21 my memory now, but I don't think -- no, not on basic,
22 but on the programming service tiers above basic.

1 Q On the optional tiers above basic?

2 A Right. Right.

3 Q If a cable television operator was
4 offering most of its services in packages, would it be
5 fair to conclude from that offering that he is
6 determined that's his profit maximizing strategy?

7 A Certainly, and subject to the constraints
8 of regulation, too. Yes.

9 Q Is there also another element in the
10 packaging and pricing strategy of cable having to do
11 with encouraging premium subscriptions or not
12 discouraging people from taking premiums?

13 MS. BEHAN: I'm just going to object to
14 this question, what he just said -- is there also
15 another element. To date, what he has done, or up to
16 now, is ask the witness to assume things that he has
17 said, where there is no fact in evidence to
18 demonstrate, or certainly not before Dr. Crandall.

19 If there are facts in evidence that
20 relates to the advertising arrangements of various
21 networks or the like, I think that he should not put
22 in his testimony through Dr. Crandall. I think he

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1 should show him the advertising relationships and the
2 like, because again, what this is becoming is a memory
3 test. And he is asking him, in many cases, to assume
4 facts not in evidence.

5 CHAIRMAN GRIFFITH: Mr. Glist?

6 MR. GLIST: Dr. Crandall has been offered
7 as the expert, specifying that we must look at the
8 transactions for the cable networks and cable system
9 operators for measuring what is at issue in this
10 proceeding.

11 I believe that I have every right to
12 examine his understanding of the breadth of what those
13 transactions are, and the influences in that
14 marketplace which is his chosen marketplace of
15 testimony, and also to explore other transactions in
16 related marketplaces to see whether they compare
17 favorably or unfavorably with the market that he has
18 chosen.

19 CHAIRMAN GRIFFITH: All right.

20 MS. BEHAN: Can I just say, what I am
21 objecting to is not his exploration of these themes.
22 I am objecting to the way in which he is framing the

1 questions, such that he is often assuming facts that
2 are not in evidence, and he is not presenting them.
3 And then he's going on to the next question and
4 saying, "Okay. And isn't there one more element of
5 packaging?" as if the witness had answered the
6 question substantively rather than based on the
7 assumptions that were given to him. That's what I'm
8 objecting to.

9 CHAIRMAN GRIFFITH: Okay. Your objection
10 is overruled. We feel that this witness has testified
11 on direct and goes to what -- his testimony is related
12 directly to what this Panel is to consider. So we're
13 going to permit a rather broad cross examination of
14 him, in order to weigh and evaluate the extent of his
15 direct testimony.

16 MS. BEHAN: Okay.

17 CHAIRMAN GRIFFITH: Thank you.

18 BY MR. GLIST:

19 Q Do you recall the question outstanding,
20 sir, or would you like me to repeat it?

21 A You'd better repeat it. I think I do
22 recall, but give it to me anyway.

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1 Q When a cable operator selects packages and
2 prices, a basic cable network, is one of the elements
3 in his decision the effect that it has on premium
4 subscriptions?

5 A I would certainly think so. Certain
6 premium subscriptions bring him additional net
7 revenue, so he would have to worry about that.

8 Q Does he try to devise a basic cable
9 arrangement that will encourage premium subscriptions?

10 A I would think that that would be in his
11 interest, to price his services in such a way as to
12 attract subscribers, so that they might purchase
13 premium services from him.

14 Q In the preparation of your book on cable
15 television, didn't you explore this very --

16 A Yes.

17 Q -- particular phenomenon?

18 A Yes.

19 Q And you attempted to measure what the
20 right cable network was to attract premium --
21 customers likely to take premium?

22 A No, that isn't quite correct. We did lots

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1 of things that are not explained in the book, because
2 they didn't work. But what we were trying to explain
3 is why it was that in our results this time we found
4 that the price sensitivity/price elasticity of demand
5 for basic cable was less than one in absolute value,
6 which means that -- it would seem, if that result is
7 correct, the cable operator could raise his basic
8 rate, reduce subscriptions, and yet raise revenues.

9 Why would he do this? Why would he
10 operate in this inelastic range of his demand curve?
11 And our speculation was he would do so in order to
12 induce people to buy through for premium. It was
13 profitable for that. Now, that was a deduction based
14 upon a result.

15 Q Didn't you also conclude that cable
16 operators themselves believe that they are arranging
17 their packages in a manner to attract premium
18 subscriptions?

19 A I don't recall concluding it in that way,
20 but we may have. If you could point me to the place,
21 I'd be happy to discuss it with you.

22 MS. BEHAN: This is the transcript. This

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1 is not the book, a portion of the book.

2 MR. GLIST: He testifies about his
3 research leading to the book.

4 I ask that this be marked as SBCA 23X.

5 (Whereupon, the above-referred
6 to document was marked as SBCA
7 Exhibit No. 23X for
8 identification.)

9 MS. BEHAN: Could you hold on for a
10 second?

11 CHAIRMAN GRIFFITH: Sure.

12 MS. BEHAN: I think that this may not be
13 the entire testimony, and I think we're entitled to
14 the entire transcript of his testimony. No, I think
15 we're entitled to -- I don't need that kind of
16 behavior. I think what we're entitled, under the
17 rules, is to the entire transcript of his testimony.
18 This testimony was in another proceeding. They have
19 not tried to put it up to date, to the extent that I
20 know, into evidence. Technically, this is hearsay
21 evidence, which they have not tried to put into
22 evidence prior to this proceeding, and at the time

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1 that they were supposed to.

2 I don't have a problem using it for
3 impeachment purposes to impeach something that he has
4 said. But the rule of completeness would require,
5 one, that this all go in; two, if there's a better
6 source, because this is hearsay testimony, for what is
7 in the book, such as the book itself, I also believe
8 that this does not qualify for being used as
9 substantive evidence as to what the book says under
10 the hearsay rules.

11 But, three, I would like him to be able to
12 testify to this subject, and I'm perfectly pleased
13 with it. I simply want to have the full testimony in
14 the record, and I would like the opportunity -- and I
15 can do it on redirect -- to be able to refresh his
16 recollection, if necessary, with the book itself,
17 because the book is old, as he has testified. And I
18 believe the way this has been done violates both the
19 court procedures and the hearsay rules.

20 CHAIRMAN GRIFFITH: All right.

21 Mr. Glist?

22 MR. GLIST: The transcript is from

1 testimony by Dr. Crandall about cable distribution.
2 It is not being offered as substantive evidence.
3 There are at most one and a half pages that deal with
4 the very issue on which he asked me to refresh him.
5 If he tells me that it is not enough for him to
6 refresh, that is fine. He asked me for it. I am
7 presenting it. I brought the full transcript, so that
8 if such an objection is raised, I could bring it. But
9 it seemed to me to kill an unnecessary number of trees
10 for this slender purpose. So it seems to me that I
11 should be able to continue with this.

12 MS. BEHAN: If I could just respond to
13 that. I do believe that you should be able to convene
14 after this and review the transcript and decide
15 whether or not we want the entire transcript to be put
16 in. For now, for the purposes of refreshing his
17 recollection, it's perfectly proper to use this for
18 the purposes of refreshing his recollection. To the
19 extent that he's trying to put in this as substantive
20 evidence, it is improper substantive evidence, and
21 I'll object to it.

22 CHAIRMAN GRIFFITH: I think Mr. Glist has

1 indicated he is not offering it as substantive
2 evidence. It's simply for the purpose of refreshing
3 the witness' recollection.

4 MS. BEHAN: And with that, I'm going to
5 withdraw my objection.

6 CHAIRMAN GRIFFITH: All right. For
7 that --

8 MS. BEHAN: For that limited purpose.

9 CHAIRMAN GRIFFITH: At this point, it will
10 be received for that limited purpose.

11 BY MR. GLIST:

12 Q Dr. Crandall, if you could review in
13 particular the exchange that you had between one of
14 the arbitrators and yourself, starting at 11546,
15 which --

16 A And going how far?

17 Q I believe he thanks you at 11549. The
18 particular point is within --

19 A Okay. This is Mr. Farmakides?

20 Q That's correct.

21 A Okay. Okay.

22 Q The question that I'm trying to get to,

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1 sir, is whether it is widely accepted throughout the
2 cable industry that there is an effect on subscribers'
3 willingness to buy premium based upon the selection
4 and pricing of a basic cable network package?

5 A Well, first of all, to answer your
6 question directly, I wouldn't have the foggiest idea
7 what is widely accepted in the cable industry, since
8 I have never asked groups of cable executives that
9 question. What this transcript goes to is the results
10 of research which is published in this book, which is
11 -- well, counsel calls it old. It's my most recent
12 book.

13 (Laughter.)

14 But it is true that it was put to bed a
15 couple or three years ago. And there there were two
16 things I referred to in that transcript. One was the
17 point I made just earlier, which is that cable
18 operators may operate in an inelastic portion of the
19 demand curve. That is, not raise their price on up to
20 exploit the pull value of cable, basic cable, because
21 they want to attract the incremental subscriber to buy
22 through for premium.

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1 But also, the other commentary in there
2 was that while we tried in our research to estimate
3 the separate value of different types of networks,
4 including specifically ESPN, CNN, and so forth, we
5 found -- we were unable to find a statistically
6 significant difference among them that was robust
7 enough to report. And so, therefore, we only used as
8 our explanatory variable the number of basic cable
9 networks.

10 Q And when the arbitrator -- excuse me.
11 When Mr. Lane then asked you whether this affected
12 something, why they accepted it through the cable
13 industry --

14 A Where is that? I'm sorry. I didn't --

15 Q I think that was 549.

16 A Oh, I quit reading after Mr. --

17 Q Would you review that, sir?

18 MS. BEHAN: Again, I object, and he is now
19 attempting to use it for evidence rather than
20 refreshing his recollection. I will let him answer
21 the question.

22 CHAIRMAN GRIFFITH: All right.

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1 THE WITNESS: Well, I think that goes,
2 again, to my earlier answer to you, which is I'm not
3 an expert on what the cable industry thinks. And when
4 asked the question, isn't it something that is widely
5 accepted throughout the cable industry, I said, yes,
6 I think that's true. I think it probably is true, but
7 the way you asked me the question the first time was,
8 was it my belief that this is the consensus of the
9 cable industry. And I really don't speak for what the
10 consensus of the cable industry is, but rather what my
11 research results are.

12 MR. GLIST: I see.

13 BY MR. GLIST:

14 Q As part of the transaction between a cable
15 network and a cable system affiliate, does a cable
16 network ever help to pay for or defray advertising
17 costs of the cable system?

18 A I don't know. The answer is, I guess,
19 that I just don't know if it is done that way.

20 Q So when you testified that transactions
21 between cable networks and their affiliates are the
22 transactions which should be studied for setting the

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1 rates in this hearing, you don't know whether the
2 cable network is paying for advertising as part of
3 that transaction?

4 MS. BEHAN: Objection. Misstates his
5 testimony.

6 MR. GLIST: How so?

7 MS. BEHAN: I believe the way you just
8 stated his testimony misstates his testimony in terms
9 of the relevant transactions, and I think that you
10 should read back the question and compare it to what
11 he said and ask for his statement of what he said.

12 MR. GLIST: Well --

13 MS. BEHAN: I think it misstates it.

14 MR. GLIST: I thought I had quoted
15 exactly, but I'm happy to turn you to page 7 of your
16 prefiled written direct.

17 BY MR. GLIST:

18 Q There are two full sentences at the
19 beginning of that page. "Transactions between these
20 cable networks and their affiliates provide ample
21 market information on the rates paid for the type of
22 programming distributed by broadcast networks and

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1 superstations. These rates are determined by the
2 interaction of cable system buyers and copyright
3 owners in a free open market, and thus provide a sound
4 basis for us to ascertain fair market value of network
5 and superstation programming retransmitted directly to
6 subscribers by the satellite distribution services
7 under Section 119 of the SHVA." That's your --

8 A That is my testimony.

9 Q I'm asking you, sir, do you know whether
10 those transactions which you are asking this Panel to
11 look at also include payments by the cable network to
12 the cable operator of advertising revenue?

13 A There are lots of ways in which these
14 transactions can or could take place. I know there
15 are incentive payments for networks to get cable
16 systems to take their services, particularly when
17 these networks are new, promotional discounts and the
18 like.

19 This is the evidence that, for all of
20 these cable networks which are deemed to be relatively
21 analogous to the broadcast signals at issue in this
22 proceeding, that the Panel should be looking at.

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1 Exactly how the contract is structured and whether
2 there is a gross value with a net back for all sorts
3 of promotional provisions is largely irrelevant. The
4 issue is: what's the net cost to a cable system for
5 obtaining this kind of programming? And that's what
6 ought to be looked at.

7 Q And if one is trying to determine what the
8 net cost is to the cable system, then one would need
9 to account for revenue streams coming from the network
10 to the operator?

11 A If the net cost -- yes. If the net cost
12 of the program network itself to the operator -- it
13 would be whatever the net payments are, gross minus
14 net backs. Certainly.

15 Q And if there were payments -- if there
16 were opportunities for the cable operator to sell
17 advertising, is that a value that would have to be
18 accounted for in terms of --

19 A Certainly.

20 Q -- a net --

21 A It's certainly something you would take
22 into account in examining the value to the cable

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1 operator.

2 Q You mentioned just a moment ago the
3 incentive payments. You are, of course, familiar with
4 FOX?

5 A I am familiar with -- do you mean the FOX
6 television network or FOX cable, or what are you
7 referring to? FOX is becoming a larger and larger
8 presence in --

9 Q It is a large presence, isn't it? It
10 started a fourth broadcast network?

11 A Yes.

12 Q Okay. Something that many said couldn't
13 be done?

14 A Many may have, but some of us looked at it
15 a long time ago.

16 Q It has network affiliates throughout the
17 United States?

18 A It does, indeed.

19 Q It has international holdings, either
20 directly or through affiliates?

21 A Well, News Corp. has lots of interest.
22 Exactly how they're tied to FOX television network, I

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1 don't know.

2 Q But News Corp. is a parent of FOX?

3 A That's my understanding.

4 Q And News Corp. has media operations --

5 A All over the world.

6 Q -- all over the world.

7 And News Corp., or its affiliates, has
8 invested in ASkyB, do you know?

9 A Yes, that is correct.

10 Q And do you know whether there has been a
11 recent merger announcement between ASkyB and a company
12 called Echo Star?

13 A Well, I don't know whether it's called
14 ASkyB or News Corp. But anyway, those interests have
15 indeed proposed to merge with Echo Star in the direct
16 broadcast satellite business.

17 Q When News Corp. launched a 24-hour news
18 channel, do you know how it secured affiliations with
19 cable?

20 A With some controversy, apparently. I
21 mean, this has been a very controversial issue. I
22 don't know what arrangements they made with individual

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1 cable systems, or with mayors of large cities. But --

2 (Laughter.)

3 But they clearly were very aggressive in
4 trying to get their network.

5 Q Do you read the trades, sir?

6 MS. BEHAN: Objection. Clarify what
7 trade.

8 BY MR. GLIST:

9 Q Do you read Broadcasting and Cable
10 magazine?

11 A On rare occasion these days.

12 Q Do you read Communications Daily?

13 A No.

14 Q Do you read Multichannel News?

15 A Occasionally.

16 Q Do you read Cable World?

17 A No.

18 Q Do you read TV Digest?

19 A Very occasionally, depends if I'm doing
20 research on a topic, yeah. My reading -- my answer to
21 all those question depends upon what my research is
22 currently. I can't keep up with all of those things

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1 when I'm doing research, for example, on telephone or
2 on the steel industry, or something --

3 Q Have you kept up with the amount of
4 incentive payments made by cable networks to cable
5 operators?

6 A Have I kept up with it? I'm aware of
7 them. I think "kept up" would be a strong statement.
8 No, I have not kept up.

9 Q Do you know whether FOX news was reported
10 to offer \$10 per subscriber or more?

11 A I remember something like that, but you'd
12 have to put the article in front of me. For all I
13 know, that's hearsay evidence.

14 Q Do you know what arrangements any
15 particular cable network has made with cable systems
16 with regard to what you're calling incentive payments?

17 A I don't know exactly how they are done,
18 but just simply to offer incentives, rebates,
19 whatever, promotional allowances, in order to carry a
20 new network. But it's my understanding that these are
21 largely related to new networks. That the highly
22 successful established networks, which are comparable

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1 to -- in some way, to broadcast networks involved in
2 this proceeding would not be involved in very heavy
3 such activity. At least that's my understanding.

4 Q And that understanding is based upon what
5 you have read?

6 A Based upon work I've done in this area
7 over the years, including some consulting work.

8 Q And have you been following this issue
9 closely since the fall of 1996?

10 A No. I think it's safe -- well, wait a
11 minute. I was involved in it somewhat around the fall
12 of 1996 in a consulting project, but I am not aware
13 specifically of the details of how much of these
14 payments are being made by individual networks.

15 Q Is TCI a major buyer of cable network
16 programming?

17 A Certainly.

18 Q The largest?

19 A The largest buyer of cable network
20 programming? They are the largest domestic cable
21 television company, so I would presume if you mean
22 within the United States, they would be the largest

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1 buyer of cable programming.

2 Q Have you followed TCI's financial
3 situation during the last year?

4 A Yes, to some extent.

5 Q Has TCI's financial performance kept up
6 with the stock market, generally?

7 A By "financial performance," do you mean
8 their accounting returns, or do you mean their
9 performance in the stock market?

10 Q Their performance in the stock market.

11 A No. They have underperformed in the stock
12 market rather dramatically I think for the last two
13 years, as has the average cable stock. Not all of
14 them, but the average ones.

15 Q Now, you've done work for TCI, I believe.

16 A Yes, but it has been some years. I have
17 not done any recently.

18 Q Do you follow what Dr. Malone or Leo
19 Hendery have said in the trades about programming
20 costs?

21 A I've read a few articles recently that
22 they're concerned that programming costs are rising.

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1 Q Dr. Malone is -- sorry. Could you
2 identify for the Panel --

3 A If you're talking about John Malone, he is
4 the Chief Executive Officer of TCI.

5 Q And Leo Hendery?

6 A I don't know the name Leo Hendery. See,
7 I don't hobnob much.

8 (Laughter.)

9 MS. BEHAN: It's all that research.

10 BY MR. GLIST:

11 Q Doctor, forgive me for this, but Dr.
12 Malone appointed Leo Hendery as the new president --

13 A Oh, I see.

14 Q -- of TCI.

15 A See, I don't read closely who is doing
16 what to whom. It's actually what the financial
17 results are.

18 Q Do you know whether Dr. Malone has been
19 putting pressure on programmers to reduce fees since
20 the fall of '96?

21 A I don't know anything other than what I
22 might have read in the newspapers. And I know that he

1 has expressed concern, and I'm sure that he is worried
2 about it.

3 Q Do you think that he has significant
4 influence as a buyer of cable programming?

5 A You have to define "influence" for me.
6 What do you mean by "influence"?

7 Q Would a basic cable network attempt to
8 accommodate TCI in order to assure its carriage among
9 cable television households in the United States?

10 A They would certainly be concerned about
11 getting TCI to subscribe, if TCI does this en masse.
12 And I'm not sure they do. There has been some change
13 in their buying habits. But certainly they'd be
14 concerned about getting TCI, because they're a large
15 share of the cable business.

16 Q Do you think that TCI has sufficient
17 buying power to influence the license fee that a cable
18 network might agree to?

19 A Well, as you may know, there is a very
20 lengthy debate in the literature on that, as to
21 whether the differentials attained for carriage of
22 basic networks across different MSOs of different

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1 sizes reflect transaction cost savings or reflect
2 buying power.

3 At this point, I guess I would say I'm
4 agnostic on the matter but would be leaning towards a
5 transaction cost explanation of the buying power
6 explanation and would be more inclined to lean that
7 way since certain large satellite carriers have
8 launched their systems.

9 Q Is it fair to say that there is
10 controversy over cable network programming license
11 fees today?

12 A Controversy? In what arena?

13 Q In the transactional arena that you have
14 asked us to study between cable networks and their
15 affiliates.

16 A I suppose --

17 MS. BEHAN: Objection to the question.
18 He's got to be more specific about this controversy.
19 I mean, it's pretty controversial. I would like him
20 to be more specific.

21 BY MR. GLIST:

22 Q Is there resistance today among cable

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1 television system operators about license fee
2 increases?

3 A Well, I guess, again, we could play word
4 games here about what resistance means. I mean, there
5 is controversy and resistance in every negotiation
6 that you and I make with a new car dealer, right?
7 There is going to be controversy and resistance in
8 every transaction between a cable system operator and
9 a program supplier.

10 If the evidence that appears in the
11 newspapers daily that these rates are going up is
12 accurate, then apparently whatever this controversy
13 and pressure is, it is not suppressing cable license
14 fees. They appear to be going up is what at least the
15 popular press tells us.

16 Q So you're basing your conclusion that
17 license fees are going up on the popular press?

18 A Well, day to day, that's the only source
19 I have. There are trade sources of these things, and
20 there is evidence in this proceeding for some
21 historical period. But earlier, you and I were
22 involved in a colloquy about Mr. Malone's concerns,

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1 and all of these things, and most of that, I take it,
2 has to be drawn at least from someone like myself who
3 isn't involved in the day-to-day negotiations for
4 cable networks from popular reports of it.

5 MS. BEHAN: I just want to object after
6 the fact. Again, he misstated what he has said. He
7 said, "If the evidence in the papers is correct," and
8 then he said, "You're basing your conclusion, then,
9 about this on what is in the newspapers." And the two
10 have nothing to do with each other, but I think he
11 essentially explained it enough. But I object to
12 these types of questions.

13 MR. GLIST: I wasn't trying to misstate
14 your position, sir.

15 THE WITNESS: No, that's all right. I
16 understand.

17 BY MR. GLIST:

18 Q Do I understand correctly that, because
19 you have not followed the trades carefully, or this
20 particular issue, you yourself do not know what
21 license fees are today or what they will be tomorrow?

22 A Well, I don't think anybody knows what

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1 anything is going to be tomorrow. What they are today
2 may not even be accurately reported in the trades.
3 The evidence seems to be, the popular reporting seems
4 to be that the prices are going up, which is
5 consistent with increased competition in this market.

6 The Satellite Carriers are probably
7 driving up these rates right now, because they're in
8 the market buying.

9 Q Have you worked for a satellite carrier in
10 your professional career?

11 A Well, yeah. You said I worked for TCI,
12 remember? So they're a satellite carrier, right?
13 There may be other companies I've worked for who have
14 had interest in satellite carriers, but I have not
15 done much work explicitly, or any work that I can
16 recall, explicitly on the satellite industry.

17 Q And have you done work on the satellite
18 industry's negotiations with the providers of basic
19 cable network programming?

20 A No, I have not.

21 Q Yesterday afternoon when Ms. Behan was
22 offering your testimony, you made a reference to work

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1 that you had done I believe for TCI about measuring
2 market dominance in the cable industry. Were those
3 the words you used?

4 A Yes. There was a -- under the 1984 Cable
5 Act, there was a requirement that rates be
6 deregulated, except in those areas where cable
7 continued to have market power. So the issue turned
8 on what constituted a condition in which cable
9 television would have market power, and it turned on
10 the number of local television broadcast signals.

11 Initially, I believe the FCC opined that
12 three local signals was sufficient to constitute
13 effective competition and deregulation. Later on,
14 they reopened the proceeding, and I think I've filed
15 something appended to a TCI submission in that
16 proceeding which resulted in the new definition of, I
17 believe, six off-the-air broadcast signals being
18 required for competition.

19 Q This is the so-called effective
20 competitive test?

21 A Yes, I believe that's what it is called.
22 I can't remember now. That was six or seven years ago.

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1 Q Do I understand correctly that under the
2 Cable Act that if a cable system is found to be
3 subject to effective competition, then there are --
4 then it's on the ability of government to regulate its
5 rates?

6 A Under the old Cable Act, the '84 Cable
7 Act.

8 Q Under the '84 Cable Act?

9 A Which was replaced by the '92 Act, which
10 is going to be replaced by the '96 Act.

11 Q Okay. Let's just focus on the '84 Act for
12 now.

13 A Right. Well, you said "the Cable Act."
14 There have been a lot of them.

15 Q Okay. Let's start with the 1984 Cable
16 Act. And that was the Act under which you're offering
17 evidence on behalf of TCI?

18 A Yes, in a regulatory proceeding before the
19 FCC.

20 Q That's right. And under that test, the
21 idea was that, at least under the 1984 Act as it was
22 first implemented by the FCC, three broadcast signals

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1 available in a local market was deemed to be effective
2 competition for cable?

3 A That's my recollection. Remember, I
4 haven't looked at this in about seven years.

5 Q Okay. I'm not trying to test your memory.

6 A Right. Right. Yeah. I think that's
7 correct.

8 Q And your testimony was used as part of a
9 showing that the presence of six broadcast signals
10 could effectively -- could present effective
11 competition to cable television. Is that correct?

12 A It was testimony -- I can't remember
13 whether we came out in the five or six, or where we
14 came out, but what I said earlier was the FCC I think
15 eventually changed its standard to six, and ours was
16 only, of course, one filing in that matter.

17 Q Let's look for a moment at the period of
18 time between when the 1984 Act was adopted and it was
19 amended in 1992. It's the window we're in right now.

20 A Right.

21 Q Under the 1984 Cable Act, as initially
22 implemented by the FCC, is it fair to say that by the

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1 end of 1986 most of the cable television rates had
2 been deregulated?

3 A I think that's correct.

4 Q And did that have an economic effect on
5 the industry?

6 A Could you define "economic effect"? Do
7 you mean the --

8 Q For example, would you say that the rates
9 that cable television systems then charged increased
10 more than inflation, or less than inflation, after
11 1986?

12 A Well, we know as a fact that the rates
13 increased more than the average inflation rate between
14 '86 and '89 or '90, because the General Accounting
15 Office studied that matter. Whether that was due to
16 deregulation per se, or to a substantial increase in
17 the number of signals and the expansion of channel
18 capacity is something that is still controversial.
19 And the economic effect of deregulation per se is
20 still controversial, and I'm still battling with
21 people in the professional journals, and so forth,
22 over that issue.

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1 Q I will not try to resolve that issue.

2 A Okay. Okay. But you asked economic
3 effect.

4 Q Okay. Let's talk about what happened
5 rather than chase the chicken and egg. You mentioned
6 that there was an investment in channel capacity by
7 the cable industry during that period of time?

8 A Yes.

9 Q And you mentioned that there was a growth
10 in cable television networks during that time?

11 A Yes.

12 Q Do you have a sense of how much cable
13 television channel capacity has increased since, let's
14 say, 1985, before rate deregulation cut in?

15 A And?

16 Q And today.

17 A And today? We have very imprecise numbers
18 on that. The numbers that are reported are of
19 frequency distribution, typically between less than
20 12, 12 to 24, and so forth. The GAO study, the last
21 of which was 1990, did measure that for the cable
22 systems it canvassed.

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1 But my impression is that the number of
2 channels continues to go up, though it is reaching a
3 -- for a lot of them, reaching a practical maximum in
4 that they're -- now cable systems are basically
5 transforming their systems to digital transmission in
6 order to expand the number of channels.

7 So the answer is: I don't know precisely
8 how much channel capacity has increased.

9 Q Could we try to establish a range? You
10 have written in the area. And I'm not -- this is not
11 a memory test. I'm trying to get a sense of scale.
12 Would it be fair to say that about half of cable
13 television subscribers today are served by systems
14 with 54-channel capacity?

15 A I haven't looked at those numbers.
16 They're available annually in the Cable TV Fact Book.
17 You may have looked at them more recently, and that
18 may be the basis for your question. But I just
19 haven't looked at them recently. That would not seem
20 unreasonable to me, but I'd have to look it up.

21 Q Going back to 1985, does it strike you as
22 a fair estimate that about 10 percent of subscribers

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1 were served by systems with 54 channels?

2 A Again, I wouldn't be surprised. It would
3 certainly be substantially less than today.

4 Q And if we were to compare the number of
5 basic cable channels that were available in 1985
6 versus today, do you have a sense of scale of what has
7 happened between then and now?

8 A Available on the cable systems or
9 available on the satellite?

10 Q Available on the satellite.

11 A It has increased dramatically. The last
12 time I looked at it, I think it was something like 110
13 or so. I would say that's probably at least a
14 doubling since '84, and maybe more.

15 Q When cable television operators were
16 expanding their channel capacity during this time,
17 were they doing so to carry more basic cable networks,
18 to carry more broadcast channels, or something else?

19 A Well, what motivated them had to be to
20 expand their service. Whether, in fact, over time
21 they added more basic cable, more broadcast networks,
22 or other services I guess is something one would have

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1 to look up. In the study we did and published in '96,
2 we saw a substantial increase in the number of basic
3 cable networks. And from that, we deduced that the
4 increase in value of the service more than offset the
5 increase in rates over that period of deregulation.

6 Q Did you look during that study at whether
7 the number of distant broadcast signals was increasing
8 or decreasing or changing at all?

9 A For our sample, we did. I don't remember
10 what the numbers were at this point, but it's in the
11 book somewhere.

12 Q Do you know whether the number of distant
13 signals that are delivered to a cable subscriber today
14 are more or less than they used to be in 1985?

15 A In 1985? No, I'd have to look that up.
16 I don't know what, on average, their carriage was.

17 Q Do you know whether the cable compulsory
18 license royalty pool is larger or smaller than it was,
19 say, five years ago?

20 A I'm not intimately familiar with the size
21 of the pool. I've been involved in two proceedings
22 over the divvying up of the pool, but I've never

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1 really spent much time looking at the total magnitude
2 of it.

3 Q Okay. So you mentioned that, in 1992,
4 Congress changed the definition of effective
5 competition. Is that part of the 1992 Cable Act?

6 A It didn't so much change the view of
7 effective competition, but it essentially imposed
8 regulation on cable systems.

9 Q You're saying it didn't change the
10 definition?

11 A Well, it essentially changed the entire
12 approach. It essentially assumed that there was not
13 effective competition and moved to very aggressive
14 rate regulation of cable systems.

15 Q And yet there is still, under the 1992
16 Act, a vehicle for deregulating the rates of a cable
17 system that is subject to effective competition, isn't
18 there?

19 A Yes. There is language in there about
20 competition from another cable system, from
21 surprisingly, municipal cable competition, the third
22 criterion in there as well.

1 Q Is there a focus now on effective
2 competition presented by multichannel or video
3 programming distributors, rather than from
4 broadcasters?

5 A Is there a focus?

6 Q In the '92 test of effective competition.

7 A My recollection is that that would be part
8 of the determination -- the existence of other
9 multichannel distribution systems, including cable
10 overbuild.

11 Q Would it include DBS?

12 A No. Well, wait a minute. Now you're
13 testing my memory. Yeah, the '92 Act --

14 MS. BEHAN: Can I just lodge an objection,
15 to the extent that this is a test of the '92 Act. I
16 would at least like him to put the statute before him,
17 and then he can read it and decide. So long as he
18 knows the answer, but I'd object to the extent he is
19 asking for a proffer of a legal interpretation of the
20 '92 statute that the specific provisions are not at
21 issue in this proceeding, but only to the extent he is
22 looking for a legal interpretation. I don't object to

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1 the extent he is just asking for his general
2 understanding or recollection.

3 MR. GLIST: I'm not asking for a legal
4 interpretation. He did the professional work of TCI
5 on the change in effective competition. He testified
6 and he volunteered for me that it changed in 1992.
7 I'm just trying to determine what the change is.

8 CHAIRMAN GRIFFITH: You're asking for his
9 expert opinion.

10 MR. GLIST: Yes.

11 CHAIRMAN GRIFFITH: All right.

12 THE WITNESS: If I had my '96 book in
13 front of me, I could tell you very easily. But
14 essentially, my recollection is that DBS does not
15 constitute effective competition. Sources of
16 competition, I believe, as defined in that Act, were
17 a cable system having less than 30 percent of its
18 market being subject to a terrestrial competitor such
19 as the cable overbuild or being subject to a municipal
20 -- being a cable -- subject to municipal cable
21 competition.

22 MR. GLIST: I'm not trying to extract --

1 if I can show him --

2 MS. BEHAN: Absolutely.

3 MR. GLIST: I don't want you to mistake
4 anything, sir.

5 THE WITNESS: Right.

6 BY MR. GLIST:

7 Q You're familiar with this?

8 A Yes.

9 Q You can find your way around in the
10 definitions?

11 A Yes. Okay. I see it.

12 MS. BEHAN: Could we make clear for the
13 record what pages and what he is looking at actually
14 in the statute? To the extent it becomes an issue in
15 controversy, I'd like to make sure that the record
16 reflects exactly what he's looking at.

17 MR. GLIST: I had handed him the House
18 Commerce Committee compilation of communications law,
19 which is familiar to most in the room.

20 THE WITNESS: Right.

21 MR. GLIST: And I have opened it, for the
22 convenience of the witness, to Section 6.3 of the Act.

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1 The witness is certainly not bound by my page turning.

2 BY MR. GLIST:

3 Q You tell me when you're ready to proceed,
4 sir.

5 A Well, what are you asking me for?

6 Q I was just asking you whether the current
7 test of effective competition looks to competition
8 from a multichannel video programming distributor,
9 rather than from a broadcast station?

10 A Yes. It certainly changed to that. The
11 criteria, as I mentioned earlier -- had correctly
12 remembered the 30 percent criterion, and also a
13 multichannel video programming distributor operated by
14 the franchising authority for that franchise area,
15 which would suggest not a DBS system.

16 Q So is it your testimony that the DBS
17 cannot be considered an effective competitor of cable
18 television?

19 MS. BEHAN: Object. Again --

20 THE WITNESS: In the law?

21 MS. BEHAN: -- based on the same --

22 MR. GLIST: No, in the law. Based on his

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1 expert opinion of the law.

2 THE WITNESS: Well, that's my
3 recollection. I --

4 CHAIRMAN GRIFFITH: Wait just a minute,
5 please, sir.

6 MS. BEHAN: I believe that this question
7 calls more directly for a legal conclusion
8 interpreting the statute. You just had him read the
9 statute and say, you know, what does it mean? I
10 object.

11 MR. GLIST: I'm sorry. I'm trying to give
12 the witness a chance. It's legally correct. If he
13 doesn't understand it, I'll leave it alone. I wanted
14 to give him a chance to correct himself. And, you
15 know, if Ms. Behan doesn't want me to do it, I don't
16 have to pursue that.

17 CHAIRMAN GRIFFITH: With respect to DBS?

18 MR. GLIST: Yes. And I can brief that if
19 I have to, but I wanted to give him the chance to
20 refresh himself with the statute. And if she doesn't
21 want me to provide that opportunity, I'll move on.

22 MS. BEHAN: The witness can take as much

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1 time -- maybe we should take a break.

2 CHAIRMAN GRIFFITH: We could give him an
3 opportunity to review and explain his answers.

4 MS. BEHAN: Yes. I think maybe he should
5 be given a break to look at this and think about it.
6 I mean, he worked for TCI, not for --

7 CHAIRMAN GRIFFITH: All right. We'll take
8 a brief -- a short recess.

9 (Whereupon, the proceedings in the
10 foregoing matter went off the record at
11 10:51 a.m. and went back on the record at
12 11:05 a.m.)

13 MS. BEHAN: Your Honors, if I could raise
14 one issue which is I understand that he had -- Dr.
15 Crandall has to leave at 12:00. And so I just will
16 note that I don't know how much longer, but I am going
17 to have redirect; and so I just wanted to make sure
18 that we're all aware of the time.

19 MS. WOODS: Can't hear again.

20 CHAIRMAN GRIFFITH: Okay, you didn't miss
21 anything.

22 (Laughter.)

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1 No, we anticipate that Dr. Crandall will
2 be wrapped up by noon. How's that?

3 MS. BEHAN: Great.

4 CHAIRMAN GRIFFITH: Good, thank you.

5 You keep giving me these openings. I'm
6 sorry.

7 Go ahead, please.

8 CROSS EXAMINATION (con't.)

9 BY MR. GLIST:

10 Q Dr. Crandall, during the break you've had
11 an opportunity to look at the act. And if you wanted
12 to modify your answer, this would be an opportunity.
13 If you don't, fine.

14 A I'll modify it just very briefly.

15 The act changed the nature by which
16 effective competition would be determined. Previously
17 it was up to the expert judgement of the Federal
18 Communications Commission. Now the act specifies
19 three separate -- three or four separate criteria by
20 which effective competition is satisfied, some of
21 which are somewhat baffling to an economist who
22 understands the term effective competition.

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1 But one of them is that 30% penetration
2 for the cable system; another one is two unaffiliated
3 multi-channel video programming distributors each of
4 which offers comparable video programming to at least
5 50% of the households in that franchise area. I judge
6 under that standard, DBS would count.

7 Further down, however, it's a local
8 exchange carrier or its affiliate offers video
9 programming service may mean -- may trigger the
10 effective competition. But in that case, it's other
11 than direct to home satellite broadcasting.

12 Q As a matter of economics, rather than law,
13 do you consider DBS operators and cable operators to
14 be competing with one another?

15 A In the video programming market, yes.

16 Q The 1992 Cable Act also created new rights
17 affecting the relationships between cable systems and
18 broadcasters, did it not?

19 A Yes, and I don't remember the details of
20 that, yes.

21 Q Are you familiar with a concept known as
22 retransmission consent?

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1 A Oh, I'm sorry; you're referring to this?
2 Okay.

3 Yes, of course.

4 Q Would you describe retransmission consent
5 for the Panel?

6 A It's the legal term for a contract
7 provision by which a cable system can carry the local
8 signal of a broadcast station.

9 Q Prior to the adoption of retransmission
10 consent, broadcasters did not have the right to stop
11 cable operators from carrying their signals, is that
12 correct?

13 A That was part of the deal that led to the
14 '76 act and the copyright fee schedule, that's right;
15 the local broadcasters and even distant broadcasters
16 could not prevent cable systems from carrying their
17 signal subject to FCC regulations limiting the numbers
18 of them, of course.

19 Q And then in 1992, for the first time,
20 Congress took retransmission consent and extended it
21 to multi-channel video programming distributors, did
22 it not?

1 A I believe that's correct, yes.

2 Q And so under that arrangement, a local
3 broadcaster could tell a cable system operator you do
4 not have the right to carry my signal; even under the
5 compulsory license, I won't consent to it. Is that
6 correct?

7 A Yeah, he could withhold that signal and
8 negotiate the terms under which it can be carried.

9 Q And didn't that right also extend to
10 broadcasters who were imported, say, from the next ADI
11 over into the local market?

12 A I don't recall exactly how that was
13 defined in the law. Most of the contentiousness
14 developed over the local signals.

15 Q Okay, let's talk about that
16 contentiousness which you obviously recall.

17 The idea of retransmission consent was to
18 create an opportunity for broadcasters and cable
19 operators to bargain over those signals, isn't that
20 correct?

21 A That's correct.

22 Q And if you can go back to the beginning of

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1 1993, do you recall the position that ABC, NBC, and
2 CBS took under retransmission consent at the beginning
3 of this process?

4 A I don't remember the details of it. I
5 remember there was a lot of controversy over new
6 networks and the terms under which they would grant
7 retransmission consent in return for carriage of new
8 networks.

9 Q Do you recall whether a network like ABC
10 was initially insisting on payment for retransmission
11 consent?

12 A My recollection is that some broadcasters
13 were, that is correct.

14 Q Do you recall whether ABC was one of
15 those?

16 A I don't recall what ABC's specific
17 position was.

18 Q Do you recall what NBC's position was?

19 A I don't at this point.

20 Q Do you know whether ABC or NBC in fact
21 received payments from the cable industry for carriage
22 of their signals?

1 A My understanding is that they did, but
2 they did it through payments for new network -- cable
3 network services. That was the quid pro quo in
4 respect.

5 Q Okay, let's take one of those apart. ABC
6 is the owner of ESPN-2, I think we determined. So in
7 connection with granting retransmission consent in
8 1993, was the basic arrangement that the cable
9 industry would carry ESPN-2, pay a license fee, and
10 they would get retransmission consent for the ABC
11 network?

12 A That might have been it, but I don't
13 recall the details. It's been a long time since I
14 read about that, and I never really studied it.

15 Q You don't recall whether the commercial
16 networks -- but I thought that you had just testified
17 with me that the quid pro quo was the cable industry
18 who would carry basic cable nets in exchange for
19 retransmission consent.

20 A That was my testimony; but the specifics
21 of each deal with each network, I don't recall at this
22 point.

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1 Q Oh, I see. Okay, but generally, the idea
2 was the cable industry would pick up an affiliated
3 basic cable net, pay a fee for that network, and the
4 broadcaster would grant retransmission consent?

5 A That's my understanding. But I must admit
6 that it's vague in my memory because I haven't really
7 looked at it in any detail. It wasn't the subject we
8 studied, and I just -- I've never looked at it.

9 Q Do you know which basic cable nets were
10 involved in that transaction in 1993?

11 A It strikes me that Fox started a new
12 network and maybe NBC did as well. Whether it was
13 ESPN for ABC or not, I don't recall.

14 Q Do you know whether satellite carriers are
15 carrying the cable networks owned by the broadcast
16 networks?

17 A I don't know for a fact since I haven't
18 committed to memory the channel line ups of DirecTV or
19 USSB or EchoStar, AlphaStar.

20 Q I'm going to ask you to assume something
21 and then --

22 A Okay.

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1 Q -- we can try to reach a conclusion from
2 it. Assume if you will that the resolution of the
3 retransmission consent issue in 1993 was that the
4 cable television industry would affiliate with cable
5 networks owned by the broadcast networks and pay
6 license fees for those cable networks.

7 Would it be fair to say that in looking at
8 the transaction, retransmission consent had been
9 granted in exchange for the carriage of those basic
10 cable networks?

11 A I'm sorry, give me that again. Fair to
12 say that --

13 Q Retransmission consent had been granted in
14 exchange for carriage of those basic cable networks.

15 A If that was the deal, yes. I mean, that's
16 my understanding of the deal, but I don't know the
17 specifics of it.

18 Q If the satellite carriers are carrying
19 those same basic cable television networks, could one
20 characterize it as the -- an analogous transaction?

21 A Analogous in what respect?

22 Q In that the satellite carriers are

1 delivering consideration for the carriage of the
2 broadcast networks that the cable industry is
3 delivering.

4 A Well, it's not analogous in a sense that
5 they're not doing it in return -- at least it isn't my
6 understanding they are -- in return for consent to
7 carry the broadcast networks. That may be the case.
8 But in the case of satellite carriers, they can only
9 carry the broadcast networks to unserved areas, so it
10 would be a very difficult -- very different situation.

11 I certainly think it's a transaction to
12 look at; that is, the license fees between the
13 satellite carriers and those networks if they are
14 carrying them, just as the fees that the satellite
15 carriers are paying for any other networks they are
16 now carrying.

17 Q The conclusion that you have reached in
18 your testimony applies to both broadcast networks and
19 super stations, is that correct?

20 A Which conclusion?

21 Q On page seven.

22 A Well, I would think that any transactions

1 between multi-channel video distributors and program
2 suppliers ought to be looked at in examining what the
3 fair market value of these broadcast signals is to a
4 -- in the satellite distribution mode.

5 Q But your conclusion is that the market
6 that you have looked at is germane to the fair market
7 value of both network and super station signals, is
8 that your testimony?

9 MS. BEHAN: Objection; the testimony
10 speaks for itself.

11 MR. GLIST: I'm asking him to clarify it
12 because I'm not sure I understood his last answer.

13 THE WITNESS: Well, which transactions are
14 we talking about? Are we talking about the
15 transactions?

16 CHAIRMAN GRIFFITH: Objection overruled.

17 THE WITNESS: I'm sorry.

18 Are we talking about the transactions
19 between the networks and the cable systems over
20 retransmission consent?

21 BY MR. GLIST:

22 Q No, sir; I'm sorry. I'm trying to

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1 determine the scope --

2 A Okay, okay, okay; but which transactions
3 do you want to look at?

4 Q I'm trying to look at the transactions
5 that you have identified as those which are ample to
6 provide market information, the transactions between
7 cable nets and their affiliates. And as I read your
8 testimony, I thought you were saying that that
9 provided us a sound basis with respect to both network
10 and super station programming.

11 And if I've misunderstood that, I would
12 like to be disabused.

13 A I guess I'm still -- I'm missing the
14 point. Transactions between cable networks and any
15 affiliate including -- I'm sorry, any cable network
16 including basic cable networks owned by the networks
17 certainly ought to be examined.

18 Q I'm sorry; let me clarify my question,
19 sir. I think we're on different wavelengths.

20 A Yeah, right, right.

21 Q You have identified a set of transactions
22 and said look to the net effect of that transaction

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1 and that will provide us market information that
2 provides us a sound basis for -- it's the "for" that
3 I'm trying to understand.

4 I had read your testimony to say "for
5 ascertaining the fair market value of both network and
6 super stations." Now, maybe I --

7 A Yes, yes. I'm sorry, I'm sorry; I'm
8 missing the point. That's right, for both network and
9 independent stations, yes.

10 Q Okay.

11 A Yes, I'm sorry. I apologize.

12 Q In the rules of broadcasting, isn't it
13 correct that a broadcast network like the ABC
14 television network will pay terrestrial broadcast
15 affiliates as part of the transaction for
16 disseminating ABC programming?

17 A Yes.

18 Q And is that sometimes known as network
19 comp?

20 A Yes.

21 Q Do you know the size of that compensation?

22 A I haven't looked at it in a long time.

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1 Q Is it fair to say that when a broadcast
2 network like the ABC television network buys
3 programming for broadcast distribution, it has
4 purchased it on the premise that the programming is to
5 be seen nationwide?

6 A I think that when the national television
7 networks buy programming they would buy it to exploit
8 it nationwide and sometimes even in foreign markets.

9 Q Is it fair to say that when national
10 advertising on network stations is being sold by the
11 broadcast networks, that the advertisers are buying on
12 the premise that the advertisement is being seen
13 nationwide?

14 A I think they know something about the
15 affiliate carriage decisions and would know that it's
16 being seen virtually nationwide. I suspect it's not
17 -- in most cases, not being seen literally nationwide.
18 There's some unserved areas and some affiliates who
19 may not carry a particular program.

20 Q There may be some affiliates that don't
21 clear all of the feed?

22 A That's correct.

1 Q And that's a right reserved to them by the
2 rule, isn't it?

3 A That's a right reserved to them by
4 contract subject to FCC regulation. At least it used
5 to be.

6 Q I'd like to turn our attention to a new
7 area. I'm trying to accommodate Ms. Behan and your
8 schedule.

9 Let's look briefly at the compulsory
10 license itself. You mentioned that part of the 1976
11 deal was the compulsory copyright license, is that
12 right?

13 A Yes.

14 Q That was an agreement reached between the
15 broadcasting industry, the program producer industry,
16 and the cable industry, is that correct?

17 A That's my understanding. There might have
18 been other players, but it was certainly a political
19 deal crafted to allow more important distant signal
20 carriage for the cable systems.

21 Q And that compulsory license for cable has
22 been around since its adoption in 1976, isn't that

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1 correct?

2 A That's my understanding.

3 Q And super stations such as WTBS are well
4 known nationally -- people know the difference between
5 a super station and a local station?

6 A I don't know who people are. Certainly
7 those of us who work in this area know the difference.

8 Q People who sell programming to WTBS, for
9 example, are well aware of its distribution, aren't
10 they?

11 A Oh, certainly.

12 Q When a station like WTBS is known to be
13 widely distributed in cable and satellite, do the
14 program suppliers have the opportunity to account for
15 that distribution in their negotiations with the super
16 station?

17 A Account for it? I suspect that they
18 attain prices which reflect it, yeah. They certainly
19 must account for it. They know how it's being
20 distributed.

21 Q And do you know whether other arrangements
22 have grown up around the compulsory license? For

1 example, do you know whether the Atlanta Braves make
2 special payments to Major League Baseball in
3 connection with the TBS signal?

4 A I've read of some such arrangements. I
5 don't know the details of any these things, no.

6 Q Would you say that when a new television
7 network like WB seeks to establish itself with a
8 national presence, that they might even seek out a
9 super station for that affiliation?

10 A They could.

11 Q Do you know whether they have?

12 A I don't know, no.

13 Q Is it fair to say that, at least in the
14 respects that you have just testified to, that the
15 marketplace has adjusted to some extent for the
16 presence of the cable compulsory license?

17 A Oh, yes; I'm sure it has. I'm sure it's
18 affected programming decisions and lots of things.
19 Now just to the extent that the revenues from
20 distributing programs over super stations is
21 artificially suppressed by a less than market value of
22 the cable copyright, I suspect it means that

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1 programming is -- less programming goes to those
2 stations than to other distribution media.

3 Q You mentioned earlier the 1977 HBO
4 decision which I think is famous in economic
5 literature as well as legal literature.

6 A I don't know about famous in economic
7 literature, but it's certainly a well known decision.

8 Q And you've mentioned it yourself in this
9 testimony and other forums?

10 A Yes.

11 Q After that decision, didn't the broadcast
12 industry experiment with something called subscription
13 television or STV?

14 A STV existed prior to that as well, and
15 there were a number of attempts to experiment with it;
16 and I think there have been some since then. And of
17 course, it exists in other countries.

18 Q And STV would involve a broadcast
19 scrambling its signal at the transmission point and
20 then putting decoders in subscribing households?

21 A Yes.

22 Q Has STV been successful in this country to

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1 date?

2 A Not on a single channel by channel basis.
3 MMDS is a form, I suppose, of STV; but it has not
4 developed as a single broadcast station and not
5 offered service in that way, to my understanding, in
6 any commercial way.

7 Q When they tried to do it channel by
8 channel, it didn't work in this country, did it?

9 A That's my recollection, but I forget what
10 happened to it. It could pop up again with digital
11 broadcasting, but it seems to me unlikely.

12 Q Now when a commercial network like ABC
13 buys rights for broadcasting through its affiliates,
14 would they also have the opportunity in that
15 negotiation to also buy rights for distribution
16 through other technologies?

17 A They could do it, yes. Historically, for
18 a period under the financial interest and syndication
19 rules, they could not; but now they can.

20 Q Now they can?

21 A Yes.

22 Q But to your knowledge, have networks such

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1 as ABC purchased non-broadcast rights when they
2 assemble their prime time feed?

3 A I don't know what they're doing today. As
4 I say, I worked on that issue until the rules were
5 changed, and I haven't followed it since then.

6 Q Do you know if there's anything that
7 prevents the commercial networks from going into
8 direct to home or DBS themselves?

9 A I don't think they're allowed to bid on
10 the spectrum allocation that MCI and NewsCorp won.
11 They would have to get the allocation. I don't know
12 what the current FCC rules on that are, but I would
13 imagine they would be somewhat reluctant to allow
14 broadcast network entry. I guess if you think about
15 it, NewsCorp has Fox, yeah.

16 Q It would kind of suggest what, that
17 there's no restriction?

18 A Yeah, I guess so, I guess so. I don't
19 know. I had thought there was one, but -- there's
20 always a broadcast cable restriction.

21 Q Is there anything that would prevent a --
22 I'm sorry, let me move on. You mentioned -- I'm going

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1 to try to wind up.

2 You mentioned that with the opportunity to
3 go digital, that broadcasters might move more in the
4 STV direction. I just want to explore that briefly
5 with you.

6 A Possible.

7 Q When you say the opportunity to go
8 digital, are you referring to the allocation of
9 spectrum to broadcasters for a digital fee?

10 A Yes.

11 Q And that's a relatively new development by
12 the FCC?

13 A Yes.

14 Q And do you know whether there has been an
15 effort by the FCC to encourage the broadcast networks
16 to go quickly into digital broadcasting?

17 A Yes, there's a controversy right now as to
18 how quickly they will do it.

19 Q Does -- do you follow what Reid Hunt has
20 been saying on this issue?

21 A Yes.

22 Q Can you summarize for the Panel the

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1 chairman of the FCC's position?

2 A I can't with any precision, no; but my
3 understanding is that there's some dispute between Mr.
4 Hunt and other members of the Commission as to how
5 fast the broadcasters are going to actually roll out
6 digital now that some arrangement has been reached on
7 the matter.

8 Q The chairman has been very eager to have
9 the broadcast networks roll it out early, is that
10 correct?

11 A I believe that's correct.

12 Q And did the chairman in fact make a
13 proposal just within the last few weeks that the
14 network stations in the top ten markets go to digital
15 within one year?

16 A There's been discussion about that. I
17 don't recall the details. I mean, I haven't been
18 involved in that.

19 Q Do you know whether the chairman has
20 recently complained about a slow motion approach by
21 the networks?

22 A I don't know. I mean, I've been reading

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1 a little bit about this, but I don't recall that
2 specific statement.

3 Q Okay, but suffice it to say then that the
4 broadcast industry now has an opportunity to go into
5 digital over frequency that's been newly allocated to
6 them?

7 A Yes, I would say that they do.

8 Q And that the speed with which they deploy
9 such digital facilities will depend upon their own
10 interests plus regulatory encouragement?

11 A Yes; by the way, I don't know at this
12 point what the status of the allocations is. I mean,
13 I'm assuming that that decision has been made as a
14 result of congressional debate over whether this
15 spectrum should be auctioned or not, but I'm not sure
16 whether at this point the actual allocations have been
17 made.

18 Q I think you're correct, sir, that the
19 final allocation and the final decision is probably
20 not yet made. I don't want to mislead you on that.

21 A Right, right.

22 Q But you're well aware of the debate over

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1 speed and deployment?

2 A I'm superficially aware of it by reading
3 it in the newspapers.

4 MR. GLIST: I'll turn it over for
5 redirect.

6 CHAIRMAN GRIFFITH: Any additional cross
7 examination?

8 All right, either one.

9 CROSS EXAMINATION

10 BY MR. OSSOLA:

11 Q Dr. Crandall, I just have a few questions.
12 Chuck Ossola representing the Commercial
13 Networks.

14 Do you remember Mr. Glist asked you some
15 questions about retransmission consent?

16 A Uh-huh.

17 Q And as I recall -- and you were also asked
18 a question about the arrangements that had been made
19 by the commercial networks with respect to
20 retransmission consent, is that correct?

21 A Yes.

22 Q Am I correct that the substance of what

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1 you said was that there had been some kind of a barter
2 arrangement?

3 A That was my understanding. I remind you
4 that I simply haven't looked at this in any detail,
5 and it's been some time; so that was my recollection.

6 Q I think that Mr. Glist asked you to assume
7 that the cable systems had paid for retransmission
8 consent with respect to the networks. Do you recall
9 that?

10 A I don't recall.

11 MR. GLIST: Your Honor, I did not ask him
12 that question.

13 MR. OSSOLA: Well, sure; I'll be happy to
14 ask another question.

15 BY MR. OSSOLA:

16 Q Do you recall that Mr. Glist posed a
17 hypothetical to you with respect to the arrangement
18 for retransmission consent?

19 A I can remember we had some discussion
20 about it. I don't remember exactly how he posed the
21 question.

22 Q I want to ask if -- you don't have any

1 knowledge, do you, that there were payments made by
2 cable systems to commercial networks for
3 retransmission consent?

4 A No, I don't.

5 MR. OSSOLA: That's all I have.

6 CHAIRMAN GRIFFITH: All right.

7 Any recross? I'm sorry, cross
8 examination.

9 CROSS EXAMINATION

10 BY MS. HERRERA:

11 Q Good morning, Mr. Crandall. I'm Jessica
12 Herrera for the Broadcaster Claimants Group, and I
13 just have a couple of questions for you.

14 Earlier Mr. Glist asked you whether
15 NewsCorp and its affiliates had funded ASkyB. Do you
16 recall that?

17 A I recall some discussion about that.

18 Q And do you recall that you said it was
19 possible?

20 A No, I would have to have the question and
21 answer read back to me.

22 Q Okay, well lets just assume that you did

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1 say it is possible.

2 A Okay, okay.

3 Q Okay, now affiliates is a term that's
4 often used in the broadcast industry to refer to
5 stations with an associate relationship with the
6 network, is that correct?

7 A Yes.

8 Q Now when Mr. Glist referred to affiliates,
9 did you understand him to be referring to the
10 broadcast stations affiliated with Fox or the numerous
11 business entities owned by NewsCorp?

12 A I don't remember the question. We'd have
13 to see the question and see whether the word affiliate
14 was used there.

15 Q Okay. Now NewsCorp does not own all the
16 broadcast stations that are affiliated with the Fox
17 network, does it?

18 A I don't believe so, no.

19 Q Okay. So it's possible -- I'm sorry?

20 A I don't believe it could under existing
21 FCC regulations.

22 Q Is it possible that the Fox broadcast

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1 affiliates are not involved at all with the funding of
2 ASkyB?

3 A Oh, the Fox affiliates?

4 Q Yes.

5 A Oh, yes; no, the broadcast affiliates that
6 Fox does not own may have nothing to do with ASkyB.

7 Q Okay, thank you.

8 MS. HERRERA: That's all the questions I
9 have.

10 CHAIRMAN GRIFFITH: All right, thank you.

11 Any other cross examination?

12 All right; redirect, Ms. Behan?

13 MS. BEHAN: All right, I just have a few
14 questions to ask him.

15 REDIRECT EXAMINATION

16 BY MS. BEHAN:

17 Q As you may recall, Mr. Glist asked you a
18 number of questions about advertising availabilities.

19 A Yes.

20 Q Okay. And in particular, he asked a
21 number of questions about advertising availabilities
22 in relation to basic cable networks?

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1 A Yes.

2 Q Okay. What is your opinion about the way
3 that the Panel should take into account advertising
4 availabilities, if at all, in evaluating the pricing
5 of basic cable networks and thus, your analysis of the
6 pricing for satellite carriers?

7 A Well, I think that the price that a cable
8 system is willing to pay for carrying a basic network
9 would certainly depend upon the amount of advertising
10 availabilities in it. So therefore, one would want to
11 take that into account.

12 However, that being said, it's not at all
13 clear to me that the advertising availability issue
14 would affect the license rate that satellite
15 broadcasters would pay.

16 Q Why is that?

17 A Well, simply because the -- to the program
18 network, it has a choice. It can license programming
19 to various multi-channel distribution media. The fact
20 -- if it licenses it to satellite broadcasting, it has
21 to ask itself the question is it -- does it get as
22 much in return as it gets from cable.

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1 And to some extent, it's an alternative.
2 The mere fact that the satellite broadcast systems
3 don't have advertising placements in this programming
4 doesn't mean necessarily that the program networks
5 would pay less -- would allow -- charge less for it;
6 nor necessarily that the satellite broadcast systems
7 wouldn't bid up its price.

8 The satellite broadcast systems have more
9 channel capacity. They have to go after more
10 affiliations, more programming in order to fill up
11 their channels. And it's my view that that's one of
12 the things that's bidding up the price of programming
13 networks today.

14 And I suppose one could simply look at
15 what are the satellite broadcast systems now paying
16 for the same basic cable networks that the cable
17 companies are carrying. I mean, that -- those numbers
18 should be available somewhere, and one could test this
19 theory.

20 Q Would the satellite carriers have access
21 to those numbers?

22 A Since they're paying the prices, I think

1 the answer to the question is obvious.

2 Q Okay. Do you recall whether they provided
3 you with any of those numbers in your testimony today?

4 A Well, I --

5 MR. GLIST: Objection; not covered in
6 cross at all or in direct.

7 CHAIRMAN GRIFFITH: The objection is
8 sustained.

9 BY MS. BEHAN:

10 Q Now you were saying that advertising is
11 one thing that should be taken into account. But I
12 believe you said it could affect the price in various
13 ways, correct, the price adjustment in various ways?

14 Could you explain to me a little bit more
15 about what you meant by that and what are the ways
16 that it could affect it in relation to whether it
17 could be, you know, higher or lower?

18 A Well, I suppose the attractiveness of any
19 program network to a cable system is its ability to
20 draw incremental subscribers. To the extent that a
21 program network is nothing but advertisements or
22 infomercials, it reduces its ability to attract

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1 incremental subscribers.

2 So in that sense, advertising would have
3 a deleterious effect. But for a given amount of
4 advertising, the more that is ceded over to the local
5 cable system for sale, the more attractive it is to
6 the cable system and the more one would think they'd
7 be willing to pay for that network.

8 Q Are there other costs in comparing cable
9 networks and -- in terms of how much cable operators
10 versus satellite carriers pay for the -- are there
11 other costs that might be taken into account in
12 addition to -- or other factors in addition to
13 advertising avails?

14 MR. GLIST: I think I'm going to object.

15 I don't know if the question is -- cost is
16 something we did not explore.

17 MS. BEHAN: Okay, let me restate -- let me
18 restate the question, okay?

19 CHAIRMAN GRIFFITH: She's going to restate
20 it.

21 BY MS. BEHAN:

22 Q Again, Mr. Glist talked a lot about

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1 advertising availability and whether that's a factor
2 that should be taken into account in adjusting the
3 numbers that are paid for cable networks under your
4 free market value analysis up or down, correct?

5 A Yes.

6 Q Okay. Are there other factors that the
7 Panel might want to consider in adjusting those
8 numbers up or down?

9 MR. GLIST: Other factors in this
10 transaction or other factors in the world?

11 MS. BEHAN: I think the question was
12 pretty clear. I mean, we're talking about a fair
13 market value analysis. The suggestion made by Mr.
14 Glist is that under the analysis that he proposes that
15 you look at the prices for basic cable networks that
16 advertising -- the effect of advertising availability
17 should be taken into account.

18 He's just testified as to his view of, you
19 know, what that might mean and how it should be taken
20 into account. Now I'd like to know if there are other
21 factors that also might be considered in that
22 adjustment decision.

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1 And I think that that's properly within
2 the scope of redirect.

3 CHAIRMAN GRIFFITH: Mr. Glist?

4 MR. GLIST: I think, Your Honor, that she
5 is confined to the areas that I explored on cross.

6 MS. BEHAN: He just explored factors being
7 taken into account in that decision.

8 CHAIRMAN GRIFFITH: The objection is
9 overruled. It's a question that one of the
10 arbitrators had intended to ask.

11 (Laughter.)

12 MR. GARRETT: It's a well recognized --

13 THE WITNESS: As I recall, the '94 act
14 requires the Panel to take into account, what was it,
15 economic, programming, and competitive factors -- some
16 order there. And it's clear, it seems to me, that
17 satellite and cable and other multi-channel
18 distribution media are in competition with one
19 another.

20 It's clear that they operate under
21 different economic circumstances. The economics of
22 building a cable system and an MSO is very different

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1 from the economics of building a satellite system.
2 The programming is going to be relatively similar.
3 Clearly one way in which you compete is by offering
4 somewhat different programming or different options,
5 more pay per view, etc.

6 That all being said, one has to keep in
7 mind that when determining fair market value, the
8 issue is how do a willing buyer and willing seller
9 interact? And they interact by determining at the
10 margin how much is this worth to them.

11 And the fact that the cable systems and
12 satellite broadcasting systems have very different
13 economics doesn't necessarily translate into any
14 conclusion about what the marginal value the program
15 network or a broadcast station is to them.

16 BY MS. BEHAN:

17 Q What is the effect, if any, of the
18 transaction cost involved in the actual negotiations
19 that take place between basic cable networks and
20 affiliates on the Panel's evaluation of the use of the
21 prices that are reached as a way to evaluate the
22 prices that they should reach in this proceeding?

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1 A Off the top of my head, I'm not sure that
2 I could tell you. I mean, clearly one of the reasons
3 for the MSO form of ownership of cable systems is to
4 economize on transactions costs in purchasing
5 programming.

6 And one of the reasons why the license
7 fees to the large MSO's are typically somewhat lower
8 than to smaller independent cable systems or smaller
9 MSO's is a reflection of those transaction cost
10 savings.

11 How this impacts on the specific analysis
12 of what the fair market value of broadcast stations is
13 I think would be difficult to specify.

14 Q Let me be clear.

15 What are the transaction costs that are
16 involved in the distribution of the distant signals
17 and the networks through this proceeding and who pays
18 those costs?

19 A The transactions between the satellite
20 systems and the broadcast networks and independent
21 stations -- is that your question, or is it the cable
22 networks?

1 Q What are the transaction costs involved in
2 the distribution of programming through the compulsory
3 license?

4 A The compulsory license involved in this
5 proceeding, --

6 Q Yes, yes.

7 A -- namely the satellite proceeding?

8 Q Yes, yes.

9 A Well, I -- the transaction costs obviously
10 involve this arbitration, and I suspect involve other
11 decisions in allocating the copyright royalties among
12 the potential claimants.

13 Q Okay. Now in a price with cable networks
14 that cable networks and cable MSO's paid for basic
15 cable networks in the free market, would -- how would
16 transaction costs affect the price that's reached?

17 A Well, as I mentioned, it strikes me that
18 centralizing these negotiations in one MSO of a fairly
19 substantial size reduces those transaction costs; and
20 therefore, would affect the willingness to pay or
21 might also affect the bargaining power in dealing with
22 the program network.

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1 Q So does the price reflect and contain
2 within it transaction costs?

3 A Well, it reflects the transaction costs.
4 I would think those prices end up reflecting
5 transaction costs, but they are still transaction
6 costs that have to be netted out of the returns on
7 both sides.

8 Q Okay. And in the compulsory license
9 proceeding, do you believe the transaction costs that
10 do not occur in the same way as they do with cable
11 networks because of the fact that it's a compulsory
12 license should be taken into account by the Panel in
13 evaluating whether to add or subtract from the price
14 paid for cable networks and the extent to which they
15 use it as indicia of fair market value?

16 MR. GLIST: I don't understand this
17 question, Your Honor. Perhaps taken one at a time, --

18 MS. BEHAN: I can proffer what I'm trying
19 -- what I'm trying to ask is whether or not -- and
20 we've got two different transactions, and he's
21 testified as to fair market value. And it's been a
22 suggestion that we should account for advertising

1 availability as one additional cost.

2 But if you look at the numbers that are
3 reached when you look at comparable cable networks,
4 whether you should adjust them up or down; and he
5 suggested there may be reasons for adjusting up and
6 there may be reasons for adjusting down.

7 And now what I'm asking him is -- and I
8 think it's highly relevant to the Panel's
9 determination -- is there are all these transaction
10 costs that are factored into the price in the basic
11 cable network, but we're dealing in the compulsory
12 situation without those transaction costs.

13 And the question is, you know, if the
14 satellite carriers are not paying the transaction
15 costs of negotiating individually with each of the
16 players in the market, but the MSO's -- cable must,
17 that's an additional cost.

18 And I'm asking him to explain whether he
19 believes it has an effect on this proceeding. And
20 that's my -- the questions I'm asking.

21 CHAIRMAN GRIFFITH: Your proffer -- do you
22 have any comment?

1 MR. GLIST: If that's a proffer, like I
2 say, it's neither in direct nor probative to cost. It
3 should not be explored on redirect.

4 MS. BEHAN: I think he was overruled on
5 that previously.

6 CHAIRMAN GRIFFITH: Why don't you restate
7 the question then in view of your proffer.

8 MS. BEHAN: Okay.

9 BY MS. BEHAN:

10 Q Dr. Crandall, what do you believe should
11 be the effect, if any, of the differences, if any,
12 involved with transaction costs between the buyers and
13 the sellers of cable networks on the Panel's
14 determination in this proceeding of fair market value?

15 A Well, given that there's a compulsory
16 copyright and a rate to be set for that compulsory
17 copyright, then the networks and independent stations
18 receive these revenues without any sales costs. I
19 think given the program networks which are going to be
20 invoked as comparisons here for determining the
21 copyright rate have sales costs.

22 One might want to examine what those sales

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1 costs are in adjusting the program rates. But I don't
2 know exactly how you would do that because I haven't
3 spent much time thinking about it.

4 Q Are there any other factors or -- have we
5 covered the factors that you think should be used in
6 looking at the differences between the two?

7 A Well, there may be savings and transaction
8 costs on the other side too among the buyers too, so
9 they have to have less of a staff in evaluating
10 alternatives and negotiating with the program
11 suppliers in this case, the network stations or the
12 independent stations; so you might want to take that
13 into account.

14 Q Okay. Dr. Crandall, there were a number
15 of questions that were asked about the networks and
16 their relations to some of the basic cable networks
17 and their relations to some of the broadcast networks.
18 What I'd like to know is, for USA and TNT, do you know
19 whether or not anyone carries USA or TNT pursuant to
20 retransmission consent?

21 A Not to my knowledge.

22 Q Okay. Do you know how much advertising is

1 offered on cable systems by USA network?

2 A No, I do not.

3 Q What about TNT?

4 A No, I don't know.

5 Q Okay, and do you know how much advertising
6 is actually sold by cable operators on USA network?

7 A No, I don't.

8 Q What about TNT?

9 A No.

10 Q Okay, and do you know how much advertising
11 is offered by satellite carriers on USA network?

12 A It's my understanding that they don't --
13 let me see.

14 Q Do you know one way or another?

15 A No, I don't know one way or the other.

16 Q What about TNT?

17 A No.

18 Q And do you know how much advertising is
19 actually sold by the satellite carriers on those
20 networks?

21 A No.

22 Q Okay.

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1 MR. GLIST: What was the answer?

2 THE WITNESS: No.

3 MS. BEHAN: And then do you know what the
4 costs --

5 CHAIRMAN GRIFFITH: Hold on just one
6 minute.

7 Okay, go ahead.

8 BY MS. BEHAN:

9 Q And do know the what the costs of selling
10 advertising on those networks are?

11 A No.

12 Q Okay. Now Mr. Glist also talked about
13 incentive payments that are made by cable networks.

14 Do you know whether USA, TNT, or ESPN make
15 any such incentive payments?

16 A I do not; but my understanding is that
17 those incentive payments are largely made by newer
18 networks and that the established networks such as the
19 ones you've just mentioned are much less likely to be
20 making them.

21 Q Okay.

22 CHAIRMAN GRIFFITH: Ms. Behan, let me just

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1 inquire.

2 Are you going to have any recross
3 examination?

4 MR. GLIST: I certainly hope so.

5 CHAIRMAN GRIFFITH: Do you have much more?

6 MS. BEHAN: I don't have a whole lot more,
7 Your Honor.

8 THE WITNESS: I can stay somewhat past
9 12:00 -- a little bit past 12:00 would be fine.

10 CHAIRMAN GRIFFITH: Okay.

11 BY MS. BEHAN:

12 Q Now if you recall, Mr. Glist also talked
13 about the financial performance of TCI during the past
14 two years.

15 A Yes.

16 Q Okay. And also, you mentioned -- he may
17 have asked you questions about cable's financial
18 performance in the market generally in the past couple
19 of years?

20 A Yes.

21 Q Okay. And can you repeat generally what
22 you concluded about the financial performance of cable

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1 TV in the market in the past two years generally?

2 A In the last two years, it's my
3 understanding that cable stocks have rather badly
4 under performed the general market on average. There
5 are some which have done better.

6 Q Now do you have an opinion, an expert
7 opinion, based upon all of your experience that we've
8 discussed today about why cable is under performing in
9 the market and has for a few years?

10 A Well, it's curious that it has occurred at
11 a time of substantial amount of cable deregulation
12 anticipated in and then promulgated through the 1996
13 Telecom Act. I would attribute a good deal of it to
14 the onset of more robust competition.

15 And at first, I would have thought that
16 might be coming from the telephone companies; but
17 except in the Ameritech region, it appears mostly to
18 be coming from direct broadcast satellite.

19 So I would think that the threat of direct
20 broadcast satellite competition and the actuality of
21 that competition and the fact that MCI and NewsCorp
22 paid \$682 million dollars for the last of those

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1 spectrum allocations that the FCC has allocated for
2 DBS would suggest that DBS competition's coming with
3 a vengeance.

4 Q Okay. Now do you have any opinion about
5 whether that increased competition in the next few
6 years over the remaining years of the compulsory
7 license could have the effect of driving up the prices
8 paid in the market for the basic cable networks?

9 A I would think that it is probably already
10 contributing to that and would continue to contribute
11 to that as DBS grows through, what is it, 1999.

12 Q Okay. Now there was some talk about
13 market readjustment in light of the compulsory license
14 and the payments in particular that are made, for
15 example, to network affiliates by networks to carry
16 programming and whether those take into account the
17 compulsory license.

18 Does your opinion on that or the testimony
19 that you gave on that affect your belief as to whether
20 in the compulsory license proceeding the copyright
21 owners should not get compensated -- should or should
22 not get compensated for their programming in this

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1 proceeding?

2 A I don't quite understand the question.

3 Q Well, does the fact that the market -- you
4 testified that the market has adjusted or may have
5 adjusted to the compulsory license.

6 A Oh, yes.

7 Q Okay, okay. Now does that -- does the
8 fact -- you did testify to that, correct?

9 A Yes.

10 Q Okay. Does that affect your opinion as to
11 whether copyright owners should be compensated for
12 their programming according to your fair market value
13 standards?

14 A No.

15 Q Why is that?

16 A Well, all I was saying was that I would
17 expect a compulsory license on imported distant
18 broadcast signals such as independent super stations
19 at a below market rate to simply reduce the
20 attractiveness of that vehicle for distributing
21 programs of new program networks or copyright owners,
22 and that they therefore would have shifted more over

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1 to other vehicles such as basic cable networks, and
2 that would be in the market, so you'd observe that in
3 the market.

4 When you look at the analogous programming
5 and try to judge what a fair market value is from
6 transactions for analogous programming, that
7 information's in that market.

8 Q I just -- I think I just have one more
9 question.

10 Now you mentioned in your testimony the
11 effect of large satellite carriers and the emergence
12 of large satellite carriers on license fees charged by
13 cable. What did you mean by that testimony?

14 A Well, I believe, if we're referring to the
15 same testimony, is that the advent of the DBS carriers
16 with large amounts of channel capacity -- far more
17 free channel capacity than most cable systems have,
18 has led them to seek programming to fill those
19 channels and has probably put upward pressure on the
20 prices for basic cable networks and other programming
21 that -- say, movies, I suppose -- that they attract.

22 Q Concluding the basic cable networks that

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1 you suggest should be looked at in determining fair
2 market value?

3 A I would think so. And I think the entrant
4 of any new competitor ought to increase the demand for
5 that type of input, that programming, and that might
6 explain what we're reading in the newspapers.

7 Q Okay.

8 MS. BEHAN: I have no more questions.

9 CHAIRMAN GRIFFITH: All right, recross?

10 RECROSS EXAMINATION

11 BY MR. GLIST:

12 Q Dr. Crandall, do you know if any of the
13 DTH carriers are owned by TCI?

14 A If you count PrimeStar as a DTH, which I
15 guess you would, yes; they are.

16 Q Did I understand your testimony of
17 transaction costs to indicate that the compulsory
18 license might create some efficiencies in transaction
19 costs of clearing copyrights on broadcast signals?

20 A It might. I don't know whether it does or
21 not.

22 Q Your testimony about the other factors

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1 that might have effect on the transactional
2 marketplace between cable nets and cable systems,
3 could that also include some of the larger competitive
4 issues between companies like Time Warner and Murdoch?

5 A That is such a general question. I'm
6 sorry, it would be very hard for me to answer that
7 without getting more specifics and then going through
8 a lengthy intuitive analysis.

9 Q Well, I won't suggest it today since we're
10 under constraints.

11 A I'm not trying to avoid your question. I
12 simply don't have an answer.

13 Q Let me ask it this way. Would isolating
14 the license fee gross amount account for all of the
15 relevant information in the transaction between a
16 cable network and a cable system?

17 A No, I think we just finished discussing
18 transactions costs, and that would have to be netted
19 out of that gross in some way. So no, it doesn't
20 account for everything.

21 Q Transaction costs --

22 A Advertising.

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1 Q Advertising?

2 A In some way, yes.

3 Q You testified on redirect that you did not
4 know if USA or TNT were retransmission consent
5 channels. Didn't I understand that you don't know
6 which are retransmission consent channels by name?

7 A Retransmission consent as applied to
8 broadcast stations, I don't think that was the way the
9 question was asked. But -- I don't recall how the
10 question was asked, but it was my answer that I didn't
11 know anything about retransmission consent applying to
12 those cable networks.

13 Q And you can't identify the particular
14 cable networks that may have been involved in the
15 retransmission consent resolutions in 1993?

16 A Oh, I see; you mean as a quid pro quo,
17 that part of it?

18 Q Yes.

19 A No, I couldn't off the top of my head. I
20 think I know a couple of them, but I don't know them
21 all.

22 Q You also testified on redirect that you

1 thought incentive payments were largely from newer
2 networks, but I want to understand just how carefully
3 you have been following this issue since the fall of
4 1996.

5 A I have not been following it very closely.
6 It's just my -- I mean, just intuition and deduction
7 as an economist would suggest that you're more likely
8 to engage in this behavior when you have something new
9 to sell that doesn't have a market presence. And you
10 either can cut the price and provide other incentives
11 in order to get carriage, in order to be able to sell
12 it to someone else.

13 Q But you don't know yourself whether in
14 renewing a carriage agreement, some of the same
15 dynamics might come into play?

16 A They might come into play, but I would
17 think that ESPN has a substantial more --
18 substantially more bargaining power and presence in
19 the market and is less likely to have to engage in
20 those things for renewals.

21 Q Do you know what DTS carriers pay for
22 their programming?

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1 A No, I think that was a question that Ms.
2 Behan asked me. I do not. But I think it would be
3 important information for the Panel.

4 Q Do DTH carriers incur costs in uplinking
5 signals?

6 A I presume they do.

7 Q And do they incur costs in authorizing
8 subscribers for the receipt of particular packages of
9 signals?

10 A You mean in terms of -- in terms of
11 handling the communication with the subscriber to
12 unscramble the device?

13 Q Yes, sir.

14 A Yes, they incur some costs; sure.

15 Q If the market has already made an
16 adjustment in the price of programming sold to a super
17 station and it has been accounted for in that price,
18 is it economically efficient to pay additional sums to
19 that same program supplier for distribution in the
20 satellite universe?

21 A The answer is it certainly could be.

22 Q To pay them more?

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1 A Yes.

2 Q Even if they have been already compensated
3 for that distribution to that universe?

4 A It sends a market signal as to the value
5 of exploiting that program in another area which would
6 induce entry by new program suppliers because they
7 would recognize a new source of revenue. So that
8 could be very efficient.

9 Q You testified that the attractiveness of
10 super stations may have declined because of the
11 presence of the compulsory license. Did I understand
12 that correctly?

13 MS. BEHAN: Objection.

14 I think you misstated the testimony.

15 BY MR. GLIST:

16 Q I understood on your redirect that you
17 said that program suppliers might steer clear of super
18 stations with a particular form of programming because
19 of concerns over the compulsory license.

20 A My testimony was that to the extent that
21 they are being rewarded at less than market rates
22 because of the compulsory copyright rates which were

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1 put in place in '76, it would make them a less
2 attractive vehicle at the margin for program
3 suppliers.

4 Q I see. And are you aware that the NBA has
5 authorized the Bulls to appear on WGN?

6 A I have read something about that.

7 Q Would that indicate that there is --
8 continues to be carriage or attractive programming on
9 a super station regardless of the concern you just
10 raised?

11 A There is a logical fallacy in what you
12 say. I didn't suggest that the attractiveness would
13 go to zero. I'm saying that because of the low
14 copyright rate, there is going to be less programming
15 on those stations. And for all I know, the Bulls
16 would have given them three times as many.

17 There may have been other programming on
18 that station. And in fact, as I recall, there may be
19 testimony in this proceeding suggesting that cable
20 systems are carrying fewer and fewer of these imported
21 super stations and it may be just exactly a reflection
22 of that.

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1 That is, programming is shifting more and
2 more to basic cable networks and away from super
3 stations.

4 Q Have you attempted to quantify this in any
5 way in preparing for this case?

6 A No, I have not.

7 MR. GLIST: I have no further questions.

8 CHAIRMAN GRIFFITH: All right, anything
9 further?

10 MS. BEHAN: No, I have nothing further.

11 CHAIRMAN GRIFFITH: All right.

12 Mr. Crandall, thank you very much, sir;
13 you are free to go.

14 THE WITNESS: All right, well thank you
15 very much.

16 CHAIRMAN GRIFFITH: Thank you.

17 (The witness was excused.)

18 MR. OSSOLA: Your Honor, we have one
19 witness this afternoon who arrived from California
20 last night and who we're making every effort to be
21 able to get on a plane tonight. I think that's the --
22 he's the only witness of the next focus, and I would

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1 only ask if we could move as quickly as possible to
2 that witness whenever it suits the Panel.

3 CHAIRMAN GRIFFITH: How about as soon as
4 I go in the next room and get my folder on him?

5 (Laughter.)

6 We'll start, and then we'll try to go
7 until 1:00, and then we'll take our luncheon.

8 MR. OSSOLA: Very good.

9 MR. SEIVER: Can we schedule for five
10 minutes for personal --

11 CHAIRMAN GRIFFITH: Sure. We'll take a
12 five minute recess.

13 (Whereupon, the foregoing matter went off
14 the record at 12:07 p.m. and went back on
15 the record at 12:16 p.m.)

16 Whereupon,

17 ALAN BYRON STERNFELD

18 was called as a witness, and after having been first
19 duly sworn, assumed the witness stand, was examined
20 and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. OSSOLA:

1 Q Mr. Sternfeld, please state your full name
2 for the record.

3 A Alan Byron Sternfeld.

4 Q Where are you employed, sir?

5 A I work for the ABC network in Los Angeles.

6 Q What is your position at the ABC network?

7 A I'm Executive Vice President of ABC
8 Entertainment.

9 Q Could you briefly explain the relationship
10 between ABC Entertainment and ABC at large?

11 A ABC Entertainment is essentially the
12 program department of the television network. We're
13 responsible for prime time programming.

14 Q As executive vice president of ABC
15 Entertainment, what are your principal
16 responsibilities?

17 A I'm responsible for specials, for variety
18 series, late night programs, for the acquisition of
19 theatrical film, and for oversight of the on-air
20 promotion schedule.

21 Q And how long have you served in that
22 capacity?

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1 A Since last July.

2 Q Prior to becoming executive vice
3 president, did you have a prior position at ABC?

4 A Yes. For the past six years, I was vice
5 president and then senior vice president of program
6 planning and scheduling.

7 Q Could you briefly describe the scope of
8 your responsibilities in those two positions?

9 A I was charged with long range program
10 planning; assisting in the creation of prime time fall
11 schedule, and the maintenance of that schedule
12 throughout the course of the year planning for the
13 November, February, and May sweeps; participating in
14 the decision to cancel shows and rearrange our
15 schedule as is necessary; determining which movies
16 should air or when and which specials should preempt
17 what regular programs; and in part determining the
18 buying or acquisition strategy for the entire division
19 -- how many movies and mini-series we should buy, how
20 many hours of serious programs and specials and so
21 forth.

22 Q As a result of the decisions that you were

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1 charged to make, what -- well, let me restate that.
2 What effect did the decisions you made on programming
3 have on what was actually offered on ABC network?

4 A For the most part, on a day to day, week
5 in and week out basis, I made the decisions what
6 viewers would see, how they would come to know about
7 what our program offerings were through the
8 manipulation of the promotion schedule, and working
9 closely with the executives in the public relations of
10 the press department as well as the department that
11 creates the print ads and the on-air promotions from
12 the creative production standpoint.

13 Q Mr. Sternfeld, prior to your employment
14 with ABC, did you have any other employment in the
15 television industry?

16 A Yes, I did.

17 Immediately prior to working for ABC, I
18 worked in a programming capacity for a production
19 company, GTG, a co-production between Gannett and
20 Grant Tinker, a former chairman of NBC. Prior to
21 that, I served as vice president of program planning
22 and series programming for the Fox network the first

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1 year they were on the air.

2 Prior to that, I worked for NBC for about
3 eight years; the last four as vice president of
4 program planning and scheduling.

5 Q As a result of your work in the television
6 industry, have you become familiar with a process
7 whereby the commercial networks create, select, and
8 arrange their programming?

9 A Yes.

10 Q And are you generally familiar with the
11 content of that programming offered by the commercial
12 networks over the last ten years or so?

13 A Completely.

14 Q Are you also knowledgeable, sir, about the
15 operations and programming provided by network
16 affiliates?

17 A Very much so.

18 MR. OSSOLA: At this point, I'd offer the
19 witness for any voir dire.

20 MR. GLIST: I have no voir dire.

21 CHAIRMAN GRIFFITH: No questions? All
22 right, thank you.

1 Go ahead.

2 BY MR. OSSOLA:

3 Q Mr. Sternfeld, let's begin by -- describe
4 briefly the ABC television network and what the actual
5 network consists of.

6 A The network consists of divisions that
7 oversee sports, news, Saturday morning, day time,
8 prime time, and late night programming areas. The
9 network consists of a department which interacts with
10 the stations known as affiliate relations and oversees
11 the contractual relationship between the network and
12 the affiliated stations.

13 It consists of the sales department which
14 makes deals with advertisers which represents the
15 bulk, if not the sole revenue, of the TV network. And
16 of course, there are all the other ancillary areas:
17 legal, finance, accounting, public relations, and
18 research, and promotion.

19 Those are principally the areas in a
20 television network.

21 Q Does your answer apply generally to all
22 three commercial networks, ABC, NBC, and CBS?

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1 A Correct.

2 Q Mr. Sternfeld, throughout my questioning,
3 I'm going to refer to the networks. And by that, I
4 just want you to be clear that I'm referring to ABC,
5 NBC, and CBS unless otherwise specified.

6 Could you briefly tell the Panel what the
7 relationship is between the network in the larger
8 sense and television stations that may have a
9 relationship with a network around the country?

10 A The network is a program supply source
11 that provides a simultaneous transmission to all
12 stations with the adjustment for the various time
13 zones and presents commercials which represent
14 advertising revenue within those shows that are sold
15 on a network basis and contractually is affiliated
16 with somewhere in the neighborhood of 200 stations at
17 each network that are independently owned and
18 operated, with the exception of the stations directly
19 owned by the network.

20 And those numbers vary from one network to
21 the next. But the independently owned and operated
22 stations receive the network programs free of charge.

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1 In agreement with the network, they carry the shows,
2 carry the network's commercials, and have time in
3 between the shows to sell themselves.

4 And generally, networks also specify
5 compensation tied to local station performance which
6 may include how much they invest in their own acquired
7 programming, how successful they are with their own
8 local news operation, and the amount of money that
9 they spend to market their programs as well as the
10 network programs since a portion of every local
11 station's schedule is local station time and their own
12 news and acquired programs fill the rest of their day
13 time schedule.

14 Q The program mix that actually appears on
15 the broadcast of the network's affiliated stations,
16 can you briefly describe what that mix consists of vis
17 à vis content from the network versus content from
18 other sources?

19 A Well, typically a station's day begins
20 with a half hour or hour show at 6:00 or 6:30 in the
21 morning leading into the network news -- morning news
22 program, Today Show or Good Morning America, which

1 runs from 7:00 to 9:00.

2 There may be a local station program,
3 something like Regis & Kathy Lee or the Rosie
4 O'Donnell Show, syndicated offerings, which fill the
5 hour from 9:00 to 10:00. And then generally the day
6 time network schedules run from 10:00 approximately
7 until 3:00 with a mix of game shows and day time soap
8 operas.

9 At which time, the local station schedule
10 fills in with afternoon talk shows such as Oprah
11 Winfrey, leading into the early local news, which
12 takes them up to roughly 6:00 or 6:30 when they carry
13 the network news programs featuring Dan Rather, Peter
14 Jennings, Tom Brokaw.

15 And then from 7:00 to 8:00, most local
16 stations run their prime access programs. These can
17 be game shows or Entertainment Tonight, Inside
18 Edition. Those are some of the typical shows offered
19 by the local stations in that hour leading into prime
20 time.

21 The networks program the hours of 8:00 to
22 11:00, Monday through Saturday, and 7:00 to 11:00 on

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1 Sunday with a mix of prime time news magazines from
2 the news divisions as well as situation comedies like
3 Roseanne and Home Improvement and Seinfeld, as well as
4 hour dramas like NYPD Blue and ER and Dr. Quinn,
5 Medicine Woman.

6 From 11:00 to 11:30, local stations
7 broadcast their late news, and then the networks
8 Monday through Friday program the late night hours
9 with either Ted Koppel and Politically Incorrect on
10 ABC or The Tonight Show with Jay Leno and subsequent
11 late night programs on NBC.

12 Of course, CBS has the David Letterman
13 Show. ABC also has a news overnight program which
14 runs in the middle of the night, and that's a typical
15 broadcast day. So it's a mix of local and network
16 intermittently.

17 Q Mr. Sternfeld, you're familiar, are you
18 not, with the right of satellite carriers to carry the
19 network signal under the compulsory license that is
20 the reason why we're here?

21 A Yes.

22 Q Is the network signal that is carried

1 pursuant to that right -- the content of that signal
2 that which you just described?

3 A Yes.

4 Q And does the content of that signal depend
5 upon which network affiliate is being picked up by a
6 particular satellite transmission?

7 A I believe so.

8 Q Before we get into the -- further into the
9 programming, has a particular vocabulary developed
10 around the television industry over the years?

11 A There's a lot of jargon, slang, and --
12 yes, it's very inside language.

13 Q Why don't I just ask you about a few terms
14 that might arise in your testimony so that the Panel
15 will have an understanding of what they mean.

16 Let's begin with the term day part. Could
17 you explain what that term means?

18 A The various day parts include early
19 morning, which generally The Today Show or Good
20 Morning America, a daily two hour news program; day
21 time, which runs generally from 10:00 to 3:00 which
22 includes game shows and day time soap operas; early

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1 fringe, which is local station time wherein you often
2 find talk shows like Oprah Winfrey or news -- local
3 station produced news programs.

4 Prime access is the hour from 7:00 to 8:00
5 leading into the network prime time offerings. Prime
6 time is from 8:00 to 11:00 p.m., and late night --
7 well, late fringe would be the local station's 11:00
8 news, and then late night is the shows like The
9 Tonight Show and Nightline, David Letterman.

10 Q These segments of -- or these day parts,
11 as you've just described them, what is their
12 significance with respect to the organization of
13 programming from the networks?

14 A I'm not sure I follow you.

15 Q Let me ask it a different way.

16 These -- you've sort of described how the
17 programming day is broken up into day parts. What is
18 the relevance of those particular segments to
19 programming decisions?

20 A From a network standpoint, we run -- I'm
21 still not entirely sure what you're getting at.

22 Q Let me use a concrete example.

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1 What the prime time segment has a -- can
2 you just describe from a programming standpoint what
3 the perspective is from the network of the prime time
4 segment in general?

5 A The perspective on prime time is that we,
6 the networks, are advertising mediums. They are
7 principally or almost solely our single source of
8 revenue. Prime time is subject to wild vicissitudes
9 of ratings success.

10 And so go the ratings of the revenues. We
11 do a product business. We market shows to viewers.
12 And to the extent that we're successful, the head
13 count of viewers is what we sell to advertisers and so
14 go our revenues.

15 So the import of prime time is that in --
16 principally in Hollywood where most of the
17 entertainment shows are produced, there is a great
18 deal of competition among the major studies and
19 program suppliers as well as with and on behalf of the
20 networks to acquire the services of the -- what are
21 deemed to be the most talented writers, directors,
22 producers, and actors in a bidding war managed by

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1 Hollywood agents.

2 We seek to acquire what we think would
3 become the most successful programming knowing that
4 the stakes for this process are our prime time
5 revenues and a great deal of potential profit, and
6 also an enormous amount of dollar investment in the
7 programs as well.

8 The difference between prime time and some
9 of the other day parts is that where every night we
10 have a different program on our prime time schedule,
11 in day time we have the same show running five days a
12 week at the same time.

13 And the ratings trends in day time tend to
14 be far more glacial in terms of movement. Prime time,
15 it can be -- you can spend weeks promoting a show,
16 trying to launch it, and then one night have it fail
17 and need to be replaced immediately or certainly after
18 just a couple of weeks.

19 The stakes are very big, and our patience
20 is quite thin.

21 Q Now you're involved in that?

22 A I have been. It's not my principal focus

1 now, but for a long time it has been.

2 Q Two other terms that perhaps you could
3 briefly describe. You've already touched upon prime
4 time. Ratings and share. Could you tell the Panel
5 what those terms mean?

6 A Ratings and shares are both percentages.
7 There are 97 million homes in the U.S. television
8 universe, and a rating is the percent of those homes
9 as reported by the Nielson Company -- the percent of
10 homes watching.

11 So for instance, a ten rating is ten
12 percent of the 97 million homes or 9.7 million homes.
13 The share is a percent of the homes using television
14 at a particular time.

15 So for instance, if we say that 50% of all
16 homes are watching TV Monday night at 9:00 and you get
17 a one-third share of those homes, what you're getting
18 is one-third of the approximately -- half of 97 would
19 be -- help me out here -- 48½ million homes using TV.

20 One-third of that would be approximately
21 16 million homes which corresponds to a rating of,
22 let's say, 15 or 15 and change.

1 So they're both percents.

2 Q The terms series and sweeps, a term you
3 already used; could you just briefly describe those?

4 A Yes, series is -- in prime time, we have
5 half hour situation comedies or one hour dramas. A
6 series is a program usually with a minimum order of 13
7 episodes. Sometimes we produce a prototype in advance
8 of ordering 13 episodes.

9 Series renewed into their second and
10 subsequent years usually have a minimum order of 22
11 episodes, and that could increase up to 26 or 30
12 episodes if the show is successful.

13 The sweeps are principally the months of
14 November, February, and May when the Nielson Company
15 rates the demographics for local stations. The
16 Nielson Company provides the networks with a daily
17 rating score card which renders households and viewing
18 by demographic category, but that's on a network-wide
19 basis.

20 That statistical project is not available
21 on a market by market, station by station basis except
22 for the November, February and May sweeps in surveys

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1 conducted by the Nielson Company. And so it's the one
2 chance local stations have to measure their audiences
3 and set their advertising rates.

4 Q Are some of the network programs developed
5 inhouse?

6 A Yes. Obviously with the sunset of the
7 financial interest in syndication rules, the networks
8 have been permitted increasingly to develop their own
9 shows inhouse, which of course subjects them to the
10 same substantial investment in risk scenario that the
11 studios have been living with for years.

12 Shows like Dr. Quinn, Medicine Woman which
13 is on CBS, or Caroline In The City which is actually
14 produced by CBS Productions and air on NBC which has
15 a small interest in that show are good examples. And
16 obviously, since Disney has merged with ABC, any show
17 produced by Disney is in effect an inhouse production.

18 So a show like Home Improvement which is
19 produced by Disney and which airs on ABC is akin to an
20 inhouse production.

21 Q Do the networks also acquire the rights to
22 programming beyond that which they may be developing

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1 inhouse?

2 A Correct.

3 The bulk of the entertainment programs
4 that we broadcast are licensed from studies. And the
5 situation comedies, dramas, TV movies, and theatrical
6 films that we broadcast are negotiated for, in the
7 case of shows made expressly for the TV networks, we
8 pay somewhere in the neighborhood of 90% of their
9 actual production cost.

10 In return for which we have the rights to
11 take two runs within a season and, in the case of
12 theatrical films, we have no further rights than just
13 the negotiated license fee and the runs that we've
14 purchased.

15 Q Now turning to local programming, could
16 you just briefly describe what value is added to the
17 network signal by local programmers?

18 A I think in effect all viewing that's done
19 by an individual, whether it's in a home or in a hotel
20 room or any restaurant or a bar or an airport lounge,
21 it's all local viewing. Viewers may not be able to
22 actually distinguish between the local programs and

1 the network programs.

2 And if everyone at the network and in
3 conjunction with the network, the local station, does
4 their jobs right, it should be virtually impossible
5 for the local viewer to make that distinction in part
6 because there's such a sharing now of graphics,
7 design, and on-air promotion conformity between each
8 network's affiliated local stations and the network's
9 own efforts that, by design, it should be very hard
10 for the viewer to know that he's watching anything
11 other than, you know, WTTG or, you know, WJLA or
12 whatever the station's call letters happen to be and
13 know that station as being a part of the network.

14 But essentially, all program viewing is a
15 local phenomenon. The local station adds to this mix
16 to the extent that they're aggressive in pursuing the
17 acquisition of news anchor talent and production
18 facilities to create an effective local news
19 production; to the extent that they spend money
20 locally marketing their own programs including their
21 own local news productions; to the extent that they
22 have a community presence, a profile within the

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1 community as an active participant in the social and
2 cultural affairs of the community; and to the extent
3 that they are licensed specifically to that community,
4 a station is an active part of its community.

5 And in addition, stations add value to
6 the viewing process by aggressively pursuing
7 syndicated programs which are made available on a
8 market by market basis so that there's an even flow of
9 rating success from the local to the network time
10 periods, day part by day part.

11 Q What is a syndicated program?

12 A A syndicated program is a show produced
13 for national distribution but not sold to a network,
14 sold on a station by station, market by market basis
15 with exclusivity for a station in its own viewing
16 territory.

17 So as show like Oprah Winfrey, for
18 example, is seen on one network's affiliate in one
19 market and a different network's affiliate in a
20 different market, and perhaps on a totally independent
21 station in yet another market, and there's no
22 simultaneous broadcast of syndicated shows.

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1 A show like Hercules may run Saturday
2 afternoon at 4:00 in one market and, you know, Tuesday
3 night at midnight, for argument's sake, in another
4 market.

5 Q Are the negotiations for the syndicated
6 programming that you just described conducted by
7 syndicators and the local network affiliates?

8 A Local stations make their own best deals
9 with syndicators. They either pay cash or in some
10 cases there are barter transactions where the show is
11 given for free in return for a promise to air it
12 within a specific time period approved by the
13 syndicator, and then the syndicator holds back
14 commercial time within the show that he can sell to
15 national advertisers guaranteeing audience delivery
16 and allowing the station some of the time within the
17 show to sell themselves.

18 Q In some circumstances, do the local
19 stations reserve that advertising time in the
20 syndicated show to themselves?

21 A Generally most shows are sold in
22 syndication for cash with the station retaining

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1 essentially all of the time within the show for
2 themselves. And of course, some shows are sold --
3 some of the shows that are sold are -- have been
4 previously seen on network TV and are off network
5 sales, where some shows are made expressly for the
6 first run syndication market.

7 And the word first run would indicate that
8 its first time ever being telecast is on that station.
9 So for example, a sitcom like Cheers which ran on the
10 NBC network for ten years can be sold as a package of
11 half hours to a local station for cash, and a show
12 like Oprah is produced new on a daily basis for a
13 telecast first run on local stations.

14 Q From a programming perspective, what is
15 the significance of first run programming?

16 A First run programming elevates the
17 viewer's sense of that station; sort of the difference
18 between having a previously owned El Dorado in your
19 driveway and having a brand new Lexus. There is
20 greater viewer loyalty and attachment likely to a new
21 program than one that's been seen elsewhere because,
22 of course, there's also the identification with ah,

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1 Cheers, those sitcom reruns which I used to watch when
2 it was on NBC Thursday nights at 9:00 and now it's on
3 at 11:00 on this station or at 5:00 or 6:00 on an
4 independent station.

5 It adds nothing to the branding of that
6 station with viewers in the market, the identity of
7 that station as a channel destination.

8 Q You mentioned the term branding. Could
9 you explain to the Panel what that term and the
10 concept means from the standpoint of network
11 programming?

12 A Sophisticated marketing can best be
13 described with the cattlemen's metaphor. I put my
14 brand on this cow; everyone can see this cow and see
15 that it's from my ranch. To the extent that there's
16 a good marriage of program acquisition and promotion
17 and marketing, these two elements synergistically
18 reinforce each other to create an identity.

19 For instance, NBC has had some success
20 billing itself as the network which offers a line up
21 of shows for the hip, sophisticated, young adult, the
22 single, young adult viewers. Shows like Friends and

1 Seinfeld are good examples.

2 ABC has marketed itself as the -- sort of
3 a populist network of family and broadly appealing
4 entertainment shows like Home Improvement are probably
5 good examples of shows that families can watch
6 together or Friday night comedies, Family Matters, Boy
7 Meets World, for instance; which we further brand as
8 TGIF, a block of four comedies that has become so
9 successful as a TGIF brand that most kids in America
10 go home and would describe to their friends that
11 they're going home to watch TGIF as opposed to the
12 individual program titles that the four sitcoms that
13 make up that two hour block.

14 Q Of what value is successful branding to
15 the network?

16 A In an environment with, last count, over
17 180 cable program services and obviously a growing
18 list of broadcast networks and a fair number of pay
19 cable destinations, there's just so many channel
20 choices out there, and over 90% of all homes have a
21 remote, that branding is increasingly important as a
22 way to accustom viewers to going to a favorite

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1 destination.

2 It's a way of, in effect, capitalizing on
3 the notion of niche marketers, but applying it to mass
4 market circulation.

5 Q From your standpoint, having been
6 responsible for network programming, what do
7 commercial networks in general offer the television
8 viewing audience?

9 A Television networks offer high quality --
10 it's a high quality smorgasbord; a mix of news,
11 sports, and entertainment. Within the world of news,
12 you know, unequaled news gathering resources, bureaus
13 around the world to be capable of presenting, in
14 moments of crisis or live breaking news, immediate, on
15 the spot coverage.

16 Our research shows that in times of live
17 event news or catastrophe, viewers turn first and
18 foremost to the network news coverage. And in terms
19 of sports, the premiere championship and event
20 programs in each sport, networks principally are known
21 for the Olympics, the Super Bowl, the World Series,
22 the NBA Championships, premiere events of that sort,

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1 as well as a regular diet of seasonal competition.

2 And in entertainment, the most popular
3 weekly series, as we've seen from our research, even
4 in basic cable and pay cable homes, more people watch
5 the networks than watch those other channel choices.

6 The networks' entertainment offerings
7 include the most highly viewed specials like the
8 Oscars or the Grammy Awards, as well as special
9 interest programs -- the Kennedy Center Honors or
10 Celebration -- Gala for the President at Ford's
11 Theater; and mass market appeal situation comedies and
12 dramas, as well as TV movies and mini-series of a big
13 budget, high quality nature.

14 Q From the standpoint of numbers of
15 households watching, how do the network programs
16 compare with a program offered on cable networks?

17 A On average, each of the networks is
18 averaging somewhere in the neighborhood of a ten
19 rating at the moment; whereas even the most successful
20 basic cable networks average somewhere in the
21 neighborhood of a .6 rating.

22 So if you were to add up the cable

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1 networks in the aggregate, all of their viewing
2 together, I think, essentially equals one of the
3 broadcast networks. The circulation of the ABC, CBS,
4 and NBC together just dwarfs by a multiple the viewing
5 of all other choices.

6 Q With respect -- from the standpoint again
7 of households watching, what is the comparison between
8 network programs and the programs offered by
9 independent stations or pay cable?

10 A Independent stations in the aggregate, I
11 think, add up to a number somewhere in the
12 neighborhood of a little bit more than just what one
13 network would achieve on its own. Or in other words,
14 the three networks would roughly -- the three networks
15 collectively would about triple what the independent
16 stations aggregate.

17 As for pay cable networks -- well, basic
18 cable networks are only in about 65% of all homes.
19 The networks are in 98, 99% of all homes. HBO is in
20 about 22% of all homes. Showtime is in -- Showtime
21 and the Movie Channel together are in I think about
22 11% of all homes.

1 And viewing within the HBO and the
2 Showtime universe is substantially lower than network
3 viewing in those pay cable homes.

4 Q Mr. Sternfeld --

5 A And I think that's also by a factor of
6 about three to one. Favor the networks viewing -- any
7 one network's viewing level is about equal to three
8 times that of the pay cable networks.

9 Q You mentioned network news. What's the
10 role of network news organizations in defining the
11 character of the networks offering and programming?

12 A Well, network news are organizations which
13 conform to both big business and big service.
14 Historically, the -- one of the charter
15 responsibilities of a broadcast operation, and this is
16 true for local as well as network, is to provide this
17 news service which links the country in times of an
18 emergency, disaster, and crisis, and helps define the
19 character and the identify of the network through the
20 very conspicuous and prominent on-air news talent whom
21 we employ.

22 There's a famous picture at ABC which has

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1 in line Peter Jennings, Barbara Walters, Dianne
2 Sawyer, Ted Koppel, and so forth and so on. And these
3 are the faces that Americans turn to when they want
4 news. Much as at CBS, there's an equivalent picture
5 with Dan Rather and the CBS talent.

6 And at NBC, there's a lengthy list of
7 names which include Tom Brokaw and Katie Couric and
8 Jane Pauley and so forth.

9 The prime time news magazines are very
10 popular and are widely viewed. The public affairs
11 programs which principally appear on Sundays, Meet the
12 Press, Face the Nation, and so forth are not
13 incredibly highly rated, but provide a valuable
14 insight into government affairs and current events.

15 And on a daily basis, you know, there's
16 two hours of Good Morning America or The Today Show or
17 CBS's morning show, half hour of nightly news. At
18 ABC, there's Nightline with Ted Koppel and three hours
19 of news overnight.

20 When you add it all up, each of the
21 networks is presenting a substantial number -- I think
22 at ABC it's over 1,800 hours of news a year; and CBS

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1 and at NBC, somewhere around 1,200 or 1,300 hours of
2 news a year. So this is a significant part of what we
3 present to the public.

4 Q Are the numbers that you just provided, do
5 those reflect the usual news programming, or do they
6 also encompass world events and fast breaking coverage
7 of developments around the world?

8 A Whether it's a crisis in the Falklands or,
9 you know, an assassination in Israel, or a war in Iran
10 or Iraq, news is considered so important to our
11 mission and to what we provide to the American viewers
12 as a service that on a moment's notice, an effective
13 editorial judgement is made to preempt regularly
14 scheduled programs and present coverage of whatever
15 news event or crisis has broken on the scene.

16 And in addition, you know, every two years
17 and every four years, we present substantial coverage
18 of elections and political conventions and obviously
19 preempt an entire evening and into the night for the
20 election of the President and reporting on the states'
21 voting.

22 This is very important.

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1 Q Moving from news to entertainment, could
2 you describe the sorts of entertainment programs that
3 are offered by the networks?

4 A Entertainment in prime time includes half
5 hour situation comedies like Roseanne and Home
6 Improvement and Seinfeld; hour dramas such as Chicago
7 Hope, NYPD Blue, Law & Order, ER, TV movies. The
8 three networks probably present in the neighborhood of
9 about 100-odd original TV movies made expressly for
10 network broadcast each year.

11 And in addition, each network presents
12 probably another four to six mini-series each year.
13 This can be a two, three, or four night series of two
14 hour installments.

15 We present theatrical films, blockbusters
16 like Mission Impossible and Forrest Gump, and
17 specials. I've enumerated some of them. Day time
18 soap operas and game shows, late night talk shows like
19 David Letterman and Jay Leno's shows.

20 Saturday morning we provide mandated
21 several hours a week of educational children's
22 programming each week, and each of the networks has a

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1 Saturday morning scheduling for kids and teens which
2 generally goes from 8:00 in the morning until either
3 12:00 or 1:00.

4 Q With respect to the sports side of
5 entertainment programming, what is the -- what are the
6 types of sports programming that are offered by the
7 networks?

8 A The Super Bowl and NFL games throughout
9 the season; the World Series and weekly telecasts of
10 Major League Baseball; the NBA Championships as well
11 as numerous games throughout the course of the season;
12 Wimbledon and the U.S. Open in terms of tennis; all of
13 the major golf events; the Kentucky Derby and other
14 premiere horse racing events; the Indianapolis 500 and
15 other premiere race car driving events.

16 Each of the networks has a sports
17 anthology program which runs on weekend afternoons.
18 ABC Wide World of Sports may present gymnastics or ice
19 skating or track and field or any number of other
20 events as well.

21 Obviously, every four years, there's the
22 Winter and/or the Summer Olympics, and I'm probably

1 leaving out a few.

2 Q How does selection and arrangement of the
3 programming you've described -- I'm referring now to
4 news, entertainment, and sports -- contribute value to
5 the network or to viewers of the network?

6 A Well, I'll start with entertainment.

7 CHAIRMAN GRIFFITH: Let me interrupt you
8 just a minute.

9 I think we maybe should take our luncheon
10 recess. We'll take our luncheon recess at this time.
11 I'll ask you to be back at 2:00, please.

12 (Whereupon, the proceedings were recessed
13 for lunch at 12:55 p.m.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

(2:00 p.m.)

CHAIRMAN GRIFFITH: All right.

BY MR. OSSOLA:

Q Mr. Sternfeld, we were on the subject of selection and arrangement of network programming. Would you please describe how the process of selecting and arranging programming contributes to the value of the resulting signal?

A Probably the easiest point in the area with which to begin an explanation of the process is immediately following the announcement of our fall season new schedule, which we do in the middle of May. Right after that, we can begin the process roughly in June.

Let's take this year, for example. If we announce our fall schedule in May, that would start in September of '97. Immediately after announcing the schedule in June of '97, we would begin the process of developing the schedule for September of '98.

And what that would entail is identifying on a time period by time period basis where we have

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1 needs, where we have risks, and where there may be
2 opportunities. So it involves an assessment to the
3 other networks' weaknesses as well as our own.

4 We certainly know the age and the cost,
5 which sometimes enters into a decision of returning
6 series on our own schedule. And both in the writing
7 and production process, we can see problems emerge,
8 both on the old as well as the brand new shows, and
9 see creative problems that perhaps were not inherent
10 when we created the prototype as we go on to series
11 production and episodes of the new shows.

12 Over a course of the development season,
13 we'll probably examine as many as 2,000 program
14 submissions for new sitcoms and dramas at each
15 network. And from that list, we commission. Probably
16 by Labor Day and certainly by Thanksgiving, we begin
17 to see the first drafts of those scripts, about 100
18 scripts split evenly between half-hour comedies and
19 hour dramas.

20 And right after the first of the year, we
21 begin commissioning pilots, usually about 15 comedies
22 and about 15 dramas. This probably represents in

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1 total an outlay of about \$75 million worth of
2 development and production expense.

3 When you add up the cost of the 100
4 scripts, the 15 comedy pilots at about a million
5 apiece, the 13-hour drama pilots at an average cost of
6 about 2 million apiece, a couple of 2-hour drama
7 pilots at a cost of 3 million apiece, add on some
8 money for placing actors under hold to be exclusive to
9 us to be cast in those programs during pilot season,
10 the cost of the overhead deals we have with certain
11 producers who are exclusive to us, and in some cases
12 the development takes the form of six-episode series
13 orders, when you add that all together, it's easily
14 \$75 million at any one given network.

15 And the pilots are produced over the
16 winter. And then you get to the fun part, the end of
17 this whole process, which consists of a week generally
18 in Los Angeles, the first week in May where about 50
19 executives, the West Coast Program Department plus the
20 senior offices of the company, screen all of these
21 produced programs.

22 We listen to a great deal of research on

1 the returning show candidates, the opportunities and
2 risks on both our schedule and the other networks'
3 schedules, and then a bunch of testing results.

4 We have our pilot programs tested and
5 cable systems in about 20 different markets around the
6 country with an average of 1,000 survey respondents
7 for each show to get an idea of the appeal of the
8 demographic thrust of each one of the pilots, the
9 intention to view, and some response about the
10 characters and the story lines so that we have a clear
11 idea of where these shows might all fit if we were to
12 renew them.

13 And then a small group, usually only about
14 a half a dozen executives, retire to a room and argue
15 for the better part of a week about which shows to
16 cancel, which shows to move to new nights, which of
17 these new pilot programs to pick up for production for
18 the following fall.

19 And basically you can winnow down to a
20 list of your best candidate shows, those which both by
21 popular acclaim within the room as well as the
22 research that we spend a lot of money on pilot

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1 testing, we then have to see how these things because
2 not all shows can just fit in any old time period --
3 some shows might work better in a Tuesday at 9:30
4 position behind a Home Improvement. And other shows
5 might not make any sense going into a hole in the
6 schedule Friday night at 8:30, where we have a kids'
7 block of shows.

8 So special care, a great deal of
9 intuition, expertise, and editorial judgment has to go
10 into this process of projecting ahead to what the 97
11 million American households will not reject upon first
12 telecast but, instead, embrace to -- when presented
13 with these shows the following September, our success
14 at the direct expense of the other network schedules
15 and all of the programming choices available, knowing
16 that after we have put this schedule together, we then
17 have to advertise and market it and sell it to the
18 public over the course of the summer.

19 I think that about does it.

20 Q Does what you described involve making
21 both creative and business judgments?

22 A Indeed. We're not -- the primary

1 consideration in creating a fall schedule is putting
2 together a lineup of 22 hours of prime time programs
3 which will generate the biggest ratings we possibly
4 can.

5 But at the same time, we're aware that
6 we're a publicly traded company. We have an
7 obligation to produce profits. And business decisions
8 do enter into it. A show would not necessarily be
9 picked up or canceled on the basis of its cost, but
10 cost is part of the consideration of declining ratings
11 in the case of an older show and a desire to make room
12 for a new show which might have the potential of a
13 seven-year successful run in front of it.

14 Q Once the next season has been selected to
15 continuing whatever existing programs and deciding
16 upon the new ones, what is involved and what
17 techniques are used in putting together the mosaic of
18 the scheduling process?

19 A Recognizing that there are so many channel
20 choices out there and that viewers are bombarded in
21 September with a lot of new shows and a lot of
22 returning shows in different time periods, there's a

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1 lot of confusion. And so we spend a great deal of
2 time advertising and marketing these new shows.

3 And then specifically when we get to
4 September -- and this is true both for the general
5 creation of the fall schedule as well as the unveiling
6 of it, so to speak, and the way on a night by night
7 basis we make the show -- we broadcast the show to
8 viewers.

9 For instance, a show which is regularly
10 going to run Wednesday night at 9:30 can best we
11 sampled we might occasionally feel by playing its
12 first episode Tuesday night at 9:30 behind a very
13 popular show, like Home Improvement, so a lot of
14 people will sample it, be exposed to it, and then want
15 to watch it in its regular time period on Wednesday.
16 We would call this stunting.

17 In fact, this spring and right now we have
18 taken off a very popular show called NYPD Blue for six
19 weeks, a period of the year ordinarily where we'd have
20 a lot of repeats. We're trying out a new drama that
21 we feel very strongly about in the Tuesday at 10:00
22 time period knowing that there's already a very

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1 strongly developed audience-viewing habit on ABC
2 Tuesday nights at 10:00 o'clock and that this is a way
3 to ensure that viewers will sample, hopefully become
4 addicted to this new show, "The Practice," and then
5 follow it to another time period, which is yet to be
6 announced.

7 So the role out of the schedule, even
8 after it's created, involves putting shows in
9 protected or hammocked time periods between two hits
10 or stunting a show out of a time period just to ensure
11 its sampling so that when all of the confusion clears
12 after the first couple of weeks of everybody's new
13 schedules in September, there will be a viewing habit
14 and an awareness and a reason for viewers to come back
15 and sample additional episodes of the show.

16 Q How does the concept of audience flow fit
17 into the scheduling decisions? And please explain
18 what that is in your answer.

19 A Well, ideally you would like viewers to
20 begin the evening with you at 8:00 o'clock and be able
21 to watch your schedule all the way through until
22 11:00. And so -- and this also entails part of our

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1 research -- knowing that a show has a demographic
2 appeal, knowing that a new show hopefully will reflect
3 that same appeal, we can put likes next to likes and
4 lead the audience from one show to the next to the
5 next.

6 We, for instance, have learned empirically
7 and through research over the years that viewers are
8 more inclined to watch four comedies as a whole than
9 watching two comedies back to back. So on Tuesday,
10 Wednesday, and Friday nights, for example, we have
11 comedies, half-hour comedies, back to back from 8:00
12 to 10:00 on each of these 3 nights.

13 And in the last year, our marketing of
14 these blocks of programs has added a new level of
15 sophistication. We have moved the commercial
16 formatting in such a way that where we previously
17 would have end credits, which would potentially
18 release audience, we have now compressed the end
19 credits into one-third of the screen, keeping program
20 content moving on two-thirds of the screen so that
21 viewers who watch one program will be led through this
22 programming on the reduced portion of the screen right

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1 up until 8:59:59, where an instant later, at the dot
2 of 9:00 o'clock, the next program begins with a
3 prologue or a teaser, the first scene of the next
4 show, so that there is -- it's a seamless transition
5 from one show to the next giving viewers no
6 opportunity to pick up the remote or go to another
7 room of the house, for whatever reason.

8 And so we have both in terms of program
9 selection and arrangement as well as just the physical
10 manipulation of our formatting created a bona fide
11 opportunity for absolute audience flow to occur from
12 one show to the next to the next without any release
13 until you get to that eventual commercial break.

14 Q Do you have any idea how many people, for
15 example, at ABC are involved in the process of
16 reviewing proposals, making decisions, and
17 implementing the decisions at the end of the day? Do
18 you have any idea of how many people at ABC are
19 involved in that process?

20 A The process involves in California a
21 Program Department, which consists of about 45 people,
22 additionally probably another 80 or 85 people in the

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1 Promotion Department; of course, in terms of
2 executives probably another half a dozen key
3 executives in New York. So, in all, it approaches
4 about 150 people, who are fairly directly involved
5 with the process.

6 And I should mention the nature of the
7 involvement is we have creative approvals over every
8 step of the programming process. We when somebody
9 comes in with an idea have the collaborative
10 relationship, which would enable us in a way which
11 hopefully is not meddling totally with somebody's
12 artistic vision to tailor-make the idea for us much as
13 though you were walking into a tailor shop, selecting
14 material, and having him measure you for a suit
15 expressly made for your own taste and your own
16 physique.

17 The selection of the writer, the approval
18 of the story line, the notes that are given upon
19 receipt of the first draft of the script, the hiring
20 of the director, the hiring of the cast, every one of
21 these steps along the creative process, there's an ABC
22 executive or a CBS or an NBC executive approving and

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1 making suggestions, making improvements along the
2 process.

3 When we see the rough cut of the show,
4 having known what was shot, we can make
5 recommendations about what to cut out, what to put in
6 to get a different camera angle, how to juggle scenes.
7 You get a better flow within the program, suggestions
8 about music.

9 Absolutely every single element of the
10 creative product has the thumbprints of the ABC
11 Programming Department.

12 Q What is the relationship between those
13 creative judgments and the overall market identity of
14 the network in the marketplace in the mind of the
15 viewer?

16 A Well, to begin with, we're an advertising
17 medium. So we know that primarily our business'
18 success is measured in terms of adults 18 to 49 that
19 we attract and which we market to advertisers.

20 Within that, NBC has staked out for itself
21 a marketing claim to the young single adult 18 to 34
22 or 18 to 49 audience with shows like Friends and

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1 Seinfeld and what they have branded themselves as
2 "must-see TV."

3 ABC is a family appeal network. They have
4 a TGIF block of sitcoms on Friday night which appeal
5 primarily to kids and teens and their parents. And we
6 know both from our own research as well as comments
7 back from the advertisers by time in that Friday night
8 block that this has now become such an institution
9 across the country that the fast food advertisers who
10 buy time in our Friday night 8:00 to 10:00 block tell
11 us that basically the viewing has influenced behavior
12 in the culture so that families just go home on Friday
13 night and order pizzas and fried chicken and sit home
14 and watch these shows on ABC.

15 With all these choices, the marriage of
16 program selection and the arrangement with our
17 promotion and marketing creates an identity which
18 helps people just find us when they pick up that
19 remote and hopefully look for us as they're going
20 through the channel choices.

21 Q Mr. Sternfeld, based on your experience in
22 the industry, is there any justification for setting

1 a network rating proceeding that is less than a rate
2 for any other signal; that is, other than the network
3 signal?

4 A My sense of the high quality of sports
5 news and entertainment programs we send out is such
6 that if cable were to offer a package of programming
7 to viewers that did not include the broadcast
8 networks, they would have no subscribers at all. This
9 is probably the single most important element of the
10 offering that cable operators can provide their
11 customers.

12 It's again, you know, that which links
13 viewers in a common way, the water cooler conversation
14 on Friday morning among the Seinfeld and ER viewers,
15 the knowledge in moments of crisis or in live breaking
16 news that everyone is bound around a TV set watching
17 the same phenomenon.

18 Network TV provides the combination of
19 news, sports, and entertainment which is unequalled by
20 any other or all other cable services in the aggregate
21 to the extent that this is just singly I think the
22 most important component of what they offer

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1 subscribers.

2 MR. OSSOLA: Thank you, Mr. Sternfeld. I
3 have no other questions at this time and invite
4 cross-examination.

5 CHAIRMAN GRIFFITH: All right.

6 MR. GLIST: Mr. Sternfeld, for the record,
7 I'm Paul Glist, representing the satellite carriers in
8 this case.

9 CROSS-EXAMINATION

10 BY MR. GLIST:

11 Q Your basic business as a network is trying
12 to grab and hold a national audience to one channel.
13 Is that the idea?

14 A Correct.

15 Q And all of the various techniques that you
16 described, hammocking, lead in/lead out, so forth,
17 that's all to gain or retain viewership to that one
18 channel. Is that right?

19 A To maximize audience delivery, correct.

20 Q To maximize audience delivery. Audience
21 delivery to the advertisers. Is that right?

22 A Correct.

1 Q And that's why you give it away free to
2 the off-air audience, because they're doing their part
3 by watching the ads?

4 A In effect, yes.

5 Q How many non-program minutes per hour are
6 there that the audience is exposed to?

7 A It varies from time period to time period.
8 Obviously in the most highly rated prime time
9 programs, we would load up more commercial minutes
10 than in our most lowly rated ones.

11 I'd say probably on average, I think it's
12 about ten minutes per hour which is non-program time,
13 somewhere in that neighborhood.

14 Q There aren't day parts that go to 18
15 non-program minutes?

16 A I think in late night, it might be as much
17 as that. I honestly don't know where we are in
18 daytime. Prime time is my primary focus. And my
19 impression is that we're right about 10, perhaps 12
20 when you throw in the affiliate time into the
21 equation.

22 Q So it might be 10 to 12, something in that

1 neighborhood, for prime time. And when you're taking
2 an average, I take it you're also voting in children's
3 programming that's under certain commercial
4 restrictions?

5 A Right. Children's programming is handled
6 differently. Again, I don't know the commercial load
7 that we currently have on Saturday morning.

8 Q Now, you mentioned just a moment ago that
9 you have an understandably high opinion of what
10 networks contribute to the public. But I wanted to
11 ask you: The networks also would not want to be
12 excluded from a cable lineup, would they?

13 A From what cable operators offer their
14 subscribers?

15 Q Right.

16 A I don't see why they should be excluded.
17 No. I think they would probably want to be included.

18 Q I mean, you'd lose 60 percent of your
19 audience presumably if you were off the --

20 A Probably a lot less than that because,
21 again, you know, our local stations broadcast the
22 network as well as the local programs over their

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1 antenna. And a lot of people still have home antennas
2 by which they receive the signal.

3 So yes, if there was no cable carriage of
4 network, we would lose something, but it would not be
5 all.

6 Q So you wouldn't be just as content to give
7 your viewers an EB switch and tell them to watch the
8 networks off the air?

9 A Well, keep in mind, once upon a time there
10 was 99 percent U.S. coverage of the networks and there
11 was no cable. I assume that TVs are no less
12 sophisticated today than they were then.

13 Q Well, let's go over that for just a
14 moment. You began in what, about '79 with the
15 networks?

16 A '77.

17 Q '77? What would you say the combined
18 share of the networks was when you began your career?

19 A Certainly in the neighborhood of a 90
20 share.

21 Q And is it fair to say today that the
22 combined share has dropped below 50?

1 A It's somewhere in that neighborhood.
2 That's correct.

3 Q And is it lower in cable households than
4 off the air?

5 A Somewhat lower, but I don't think it's
6 that appreciably different. I don't have recent
7 numbers on that.

8 Q You live and die by these ratings, don't
9 you?

10 A Live and die by the ratings? I think
11 that's a little bit extreme, but I haven't committed
12 to memory all of this research. I mean, it's easily
13 obtainable.

14 Q And has there been a fairly steady trend
15 since the late '70s in that combined network share?

16 A I think that the network viewing trend is
17 commensurate with the growth of independent stations,
18 the growth of now it's over 180 cable services. So
19 that yes, when you allude to the changed environment
20 since 1977, what you're talking about is a 90 share
21 for the 3 networks when there were only 3 networks
22 plus PBS and a handful of, primarily UHF, independent

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1 stations.

2 Now there are hundreds of independent
3 stations to go with the several hundred cable program
4 services and all of the other choices. So what
5 you're, in effect, describing is a remarkable
6 retention rate of viewing given the exponentially
7 larger explosion of viewing choices.

8 Q You're fighting hard to hang onto that,
9 obviously.

10 You also spoke about the program
11 acquisition process, and I'd like to explore that a
12 little with you. You said that programs are not
13 necessarily going to be added or dropped based solely
14 on cost, but cost is an element in the decision;
15 right? You need to turn a profit on a particular
16 program? Is that the idea?

17 MR. OSSOLA: I think there were two
18 questions in that question, and I think there should
19 be one.

20 MR. GLIST: I'll start again.

21 CHAIRMAN GRIFFITH: Rephrase that
22 question.

1 BY MR. GLIST:

2 Q When you are making a program investment
3 decision, you're attempting to turn a profit on that
4 particular investment?

5 A We're always attempting to return a
6 profit, not necessarily on a direct show by show
7 basis, but in the aggregate, knowing that at the end
8 of the year, it's the accumulation of the movies, the
9 specials, the theatrical films, the sitcoms, the
10 dramas, everything that we put on which generates the
11 profit.

12 We can't isolate one show which might be
13 on Thursday night against a runaway hit like Seinfeld
14 or ER and make decisions based upon its profitability
15 or its cost. It has to be looked at as against the
16 whole.

17 And so I would go back to say that
18 basically shows live or die based on their ratings.

19 Q So you have to evaluate cost of a show,
20 its ability to attract an audience, weigh that among
21 other factors in this equation?

22 A Basically the determination about any one

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1 show is made on the basis of its ability to attract
2 viewers.

3 Q Is it necessarily the case that shows that
4 cost more attract more viewers or is it more
5 complicated than that?

6 A It's very complicated. I mean, there are
7 shows -- initially when we buy a pilot, we negotiate
8 a deal which covers the first four and a half years of
9 the show's life if it's a mid-season show or five
10 years if it's a fall-start show.

11 Basically at the end of that five-year
12 period, the studio who supplies us with the show has
13 the opportunity to renegotiate and/or if they feel
14 it's warranted, put the show in the marketplace and
15 shop it to any network if no deal has already been
16 reached by that same network.

17 Earlier than that, if the show is a
18 runaway hit, they can come to us and say, "You know,
19 at the end of the third year, let's talk about
20 renewing the show through year seven right now. And
21 we'll give you this following deal. Erase our
22 deficits and increase the license fee two or

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1 threefold, and the show will be yours for the next
2 four years." That kind of a deal is possible.
3 Anything is negotiable.

4 And so to an extent some expensive shows
5 -- I'll name shows like Seinfeld and Roseanne and
6 Cheers and Home Improvement -- reflect the fact that
7 they have been successful.

8 Q You also testified about taking about
9 1,800 hours of product from your News Division. Did
10 I get that figure right?

11 A I think that's about right for ABC. It's
12 somewhat less for the other two networks.

13 Q And that output would include news
14 magazines like 48 Hours or 20/20?

15 A Correct.

16 Q Now, do I understand rightly that a news
17 magazine like 48 Hours costs less than an hour of
18 entertainment?

19 A On an annual basis, actually they cost
20 about the same. Typically with an hour show, -- let's
21 take an NYPD Blue -- we buy 22 episodes. Those
22 episodes might cost us a million, five a piece. And

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1 if we add on the cost of the repeats, we'll get to a
2 number which might add up to be about 28, 29 million
3 dollars for the year.

4 I don't know specifically which news
5 magazine costs what, but let's say you take a number
6 of 600,000 a week for a news magazine and you multiple
7 that by 44 weeks. You'll come up with a number which
8 in the aggregate in the course of a year is very
9 nearly identical. Keep in mind that news magazines
10 don't play repeats the way our entertainment shows do.

11 So over the course of a 52-week period,
12 the costs of the two are very, very equivalent.

13 Q I'd like to show you a commentary on what
14 you just said that was published in the New York
15 Times.

16 CHAIRMAN GRIFFITH: It will be 24X.

17 (Whereupon, the aforementioned
18 document was marked for
19 identification as SBCA Exhibit
20 Number 24X.)

21 BY MR. GLIST:

22 Q This document which has been marked as 24X

1 for identification, could you take a moment to review
2 that? I want to ask you a couple of questions.

3 A (Perusing document.) Okay. Your turn.

4 Q This article quotes Mr. David Poltrack
5 from CBS and his analysis of the success of 48 Hours
6 and also contains some information on other news
7 magazine shows. Is it fair to say that he is reported
8 to have said that the news programs cost less to make,
9 about half entertainment?

10 A Again, -- and I just did the math here --
11 44 weeks at 400,000 a week adds up to 17 million, 6.
12 If you look at the cost of 22 episodes of some TBA
13 show that will cost 900,000 an episode, you get to
14 19.8 million, a difference of only 2 million.

15 Q What makes 48 Hours profitable or what
16 made it profitable -- and this article goes back to
17 1989 -- was where it was scheduled on CBS' lineup,
18 which I think at that point was Wednesday night at
19 10:00 o'clock.

20 And what made it successful was the fact
21 that it achieved a high share of audience for which
22 CBS was able to charge a very substantial advertiser

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1 price for a 30-second commercial.

2 Q So CBS was able to take advantage of its
3 existing News Division, create a product that would
4 attract audience for that hour, and at the same time,
5 at least in 1989, they were able to economize on some
6 of their programming costs?

7 A Well, a News Division program reflects to
8 some degree bookkeeping, which is distinct from
9 network licensing of an entertainment show from a
10 studio, where we have a fixed negotiated sum.

11 The studio facilities, the allocation of
12 overhead from the News Division, which has fixed
13 expense, some of that goes into this \$400,000 number.
14 So it's not necessarily all direct costs.

15 They've got staff. They've got cameras.
16 They've got editing facilities. How that's allocated
17 back towards the show allows some degree of leeway in
18 terms of how that division amortizes its fixed annual
19 expense.

20 But basically if you look at 44 weeks of
21 a new show versus 22 episodes of the entertainment
22 show, there's only about \$2 million worth of

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1 difference, which in the scheme of a billion dollars
2 worth of program expense runs off to zero.

3 A network person would tend to look at
4 this. And then you come back to: What's the rating?
5 What's the share? And how much can you charge
6 advertisers for this box?

7 Q You make a profit on that billion --

8 A Right.

9 Q -- dollars of investment; right?

10 A I certainly hope so. Not guaranteed, but
11 that's the idea.

12 Q When local stations make programming
13 decisions, they engage in very much the same process,
14 don't they? For example, a local station that
15 produces a local newscast is presumably selling
16 advertising time in that newscast?

17 A Correct.

18 Q And the idea there is to deliver its DMA
19 to the advertisers?

20 A To deliver in the case of local news
21 usually adults 25 to 54 to a combination of local
22 advertisers and regional or national spot advertisers.

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1 Q But they sustain that on the sale of
2 advertising in that local news program?

3 A Local news is very important as a revenue
4 generator for local stations.

5 Q I believe you mentioned in your direct
6 testimony that networks will produce and, therefore,
7 own outright some of the programming that they air,
8 but you are engaged in many transactions to acquire
9 program rights from other sources that --

10 A Typically networks own the rights to news;
11 some, but not all, sports; and a fairly limited amount
12 of entertainment product.

13 Q And the rest of it you'll get a broadcast
14 license to put it out on the network?

15 A Correct.

16 Q So as things stand today -- and your
17 expertise is prime time?

18 A Prime time entertainment.

19 Q Prime time entertainment. If you take
20 prime time entertainment, would ABC Television have
21 the right to license that directly to the satellite
22 industry for distribution to satellite homes?

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1 MR. OSSOLA: I think it's fair to say
2 based on current contractual arrangements.

3 MR. GLIST: Yes, sir.

4 BY MR. GLIST:

5 Q Based on current contractual arrangements.

6 A My familiarity ends with the notion that
7 we have rights within the U.S. and its territories to
8 have the programs air on free over-the-air television
9 and our affiliate stations.

10 The agreements either at the network level
11 or at the local level which cover broadcast by
12 satellites are beyond my area of expertise.

13 Q I'll move on to another area, then.

14 You've assembled this network lineup, and
15 you need to get these shows out to the viewing public.
16 I'm right so far; right? You need to get it out?

17 A Correct.

18 Q And part of your distribution is through
19 stations that are owned and operated by the network
20 itself?

21 A Some, yes.

22 Q Some. These are known as O and Os?

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1 A Correct, owned and operated.

2 Q Owned and operated. And for the O and O
3 stations, the network buys them and pays to operate
4 them. Is that correct?

5 A Yes. We each have a certain number of
6 stations which are now limited to I guess 35 percent
7 coverage of the U.S. CBS is pretty close to that
8 limit. ABC and NBC I think are probably close to 25
9 percent coverage of the U.S. We own them. We operate
10 them.

11 Q And you're restricted by federal
12 regulations from obtaining ownership in more O and O
13 stations than that limit. Is that correct?

14 A Correct.

15 Q So in order to reach the rest of the DMAs
16 in the United States, you have to reach agreements
17 with local stations in those DMAs. Is that --

18 A Correct, yeah. Each network has
19 approximately 200 affiliates. So the difference in
20 those markets would be made up for by our affiliation
21 agreements with all of the other independently owned
22 and operated affiliated stations.

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1 Q And when you deliver your network fee to
2 these stations, are the commercial networks themselves
3 providing the uplink to satellite so that the network
4 affiliates can then take them?

5 A Uplinked and I guess whatever happens
6 after it hits the satellite.

7 Q Uplinked to the transponder, rebroadcast
8 down to the receiver dish --

9 A Correct.

10 Q -- and at the local affiliates. Is that
11 how it works?

12 A I think so.

13 Q Okay. So you reach an affiliation
14 agreement with these terrestrial broadcast stations.
15 You've delivered signal to them via satellite. And
16 those affiliates then have certain rights to clear or
17 not clear the network programming. Am I correct?

18 A Their affiliation agreements cover their
19 clearance of shows. Every station is entitled to some
20 number of preemptions throughout the course of the
21 quarter of a year.

22 Q Is the clearance or preemption a

1 significant factor in setting the compensation to the
2 affiliate?

3 A It plays a part. I know that we have
4 incentives for stations to clear more of our schedule,
5 and we have incentives for them to participate in our
6 marketing or incentives for them to perform well in
7 their own local programming time periods, particularly
8 news. There are a number of incentives which factor
9 into our affiliation compensation agreements.

10 Q So let's suppose that you had a weak
11 lead-in show if I have the jargon right. Is lead-in
12 something that is tacked onto the end of a strong show
13 or --

14 A No. Lead-in would be an adjacency
15 immediately preceding.

16 Q Okay. So let's say that we have a new
17 weak show immediately preceding a strong show. A
18 network affiliate would have the right to preempt that
19 and put something else on if it wanted to?

20 A Network affiliates can preempt anything
21 from time to time. I'm not sure I know where you're
22 asking. Are you asking preempting a network show

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1 leading into a local time period or leading into
2 another network time period?

3 Q To me the time period doesn't matter. I'm
4 just trying to understand that the --

5 A Basically local stations can preempt, can
6 preempt here, there, or elsewhere.

7 Q And you try to provide financial
8 incentives so that they minimize the number of
9 preemptions?

10 A Correct.

11 Q Because your business is getting that
12 signal out to the audience?

13 A Correct.

14 Q Is there sometimes a battle among the
15 commercial networks to line up strong affiliates in
16 the DMAs?

17 A I think after the unsettling effect that
18 was created when Rupert Murdoch made a deal with a
19 substantial number of CBS affiliates after he acquired
20 the rights to national football telecasts, there began
21 a substantial scramble, which basically is a matter of
22 the Fox Network raiding the affiliates that had

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1 previously been attached to ABC, CBS, and NBC so that
2 he could strengthen his own distribution organization.

3 And that led to a somewhat frenetic
4 realignment of stations at every network, complete
5 change in evaluation of stations, a change in the way
6 networks affiliated with independent -- with their
7 affiliated stations, longer contracts, more money, and
8 --

9 Q More money from?

10 A More money from the networks going out to
11 the stations. And I think the networks felt that they
12 already had strong lineups and now they were
13 scrambling to recapture as many markets as they could
14 in order to get back to where they were, so to speak.

15 Q I'd like to ask you about another part of
16 the commercial network distribution apparatus that I
17 believe is known as a translator. Is that term
18 familiar to you?

19 A I think my understanding is that in some
20 markets a local station will have a number of antennae
21 that enable him to carry his signal into an adjacent
22 market, something like that. I'm not incredibly

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1 familiar with it.

2 Q Let me try to offer a description. And if
3 you know enough to agree or disagree, let me know.
4 And if you don't, we'll go on to something else.

5 It's been my understanding that a
6 translator would be established at the outer fringe of
7 a station's reach and it would then pick up that
8 signal and retransmit it into an area where the signal
9 is otherwise available only poorly, if at all. Is
10 that a description that is correct?

11 A I think I've heard of that.

12 Q Do you know whether such translators
13 create any programming themselves to add to that
14 signal?

15 A Again, I'm not incredibly familiar, but my
16 question is they just -- a carbon copy duplicate of
17 what the parent station is already doing.

18 Q And is it your understanding that the
19 parent station is responsible for erecting and
20 maintaining such facilities? If you don't know --

21 A I don't really know.

22 Q Let's move on. Are homes that are

1 watching ABC off of a satellite system watching the
2 same national programs and ads that ABC is airing?

3 A I would guess so.

4 Q Have you ever watched a satellite system
5 programs?

6 A A couple of times. I've seen an Eastern
7 feed of the network.

8 Q Do you know the difference between
9 additional signal quality and analog signal quality?

10 A I'm told that digital is better.

11 Q Do you know if DTH carriers, the satellite
12 carriers at issue in this case, are offering digital
13 signals?

14 A I'm sorry. I'm not familiar with that.

15 Q Do you know what technology ABC affiliates
16 used to transmit their programming out to the world?

17 A I believe we're all still in the world of
18 analog antennae.

19 Q Do you know if any of the DTH carriers are
20 preempting any of the broadcast feed that they receive
21 from an ABC affiliate?

22 A Don't know.

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1 Q Now, some of the non-program units that
2 are contained within a broadcast signal are
3 promotions, cross-promotions for other shows. Is that
4 correct?

5 A Correct.

6 Q And that's one of the devices that you use
7 to build audience flow. Is that the right language?

8 A I think our feeling is that the -- as
9 opposed to the money which we spend, which might be
10 \$50 million a year for print ads and for radio
11 commercials and sometimes even buying time on cable
12 networks, the most effective way we can reach our
13 viewers and persuade them to do what we would like
14 them to do is through the use of our own, where on an
15 annualized basis I think the total value of the time
16 that we give over to self-promotion is when you add in
17 the cost of production of these on-air promotional
18 announcements somewhere in the neighborhood of about
19 three million dollars at each network on an annual
20 basis.

21 Q It's obviously very important to the
22 network to be able to reach the audience with that

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1 kind of promotion?

2 A Correct. When we think that viewers am
3 bombarded with bus sides and billboards on their
4 freeway and with magazines and newspaper ads and radio
5 commercials and TV ads, memorability is a key
6 question.

7 And so the frequency and the repetition of
8 the commercial mentions encouraging viewers to watch
9 other programs on the same network is a very effective
10 tool for building audience flow, increasing the
11 audience reach of our programs.

12 Q Haven't the network affiliates that are
13 actually uplinked by the satellite carriers actually
14 changed their feed to include a promotion of
15 themselves as a satellite station?

16 A I'm sorry. I wouldn't know.

17 Q Mr. Sternfeld, I'd like to show you a very
18 brief videotape and ask if you can identify a
19 component of it based on your experience.

20 A Watching TV is my job.

21 MR. GARRETT: Your Honor, is this tape
22 being marked as an exhibit?

1 CHAIRMAN GRIFFITH: It should be.

2 MR. GLIST: We can mark this as 25X.

3 (Whereupon, the aforementioned
4 videotape was marked for
5 identification as SBCA Exhibit
6 Number 25X.)

7 MR. OSSOLA: Could I at least have some
8 kind of proffer as to what's in this?

9 MR. GLIST: This is a piece of the NBC New
10 York affiliate being carried on Prime Time 24.

11 (Whereupon, the foregoing matter went off
12 the record at 2:50 p.m. and went back on
13 the record at 2:52 p.m., during which
14 time a videotape was played.)

15 BY MR. GLIST:

16 Q Now, let's just take this apart if we can.

17 At the front end of the tape, there was a segment that
18 began with the audio "Just turn us on" and then gave
19 very fast clips from different NBC shows.

20 Is that the kind of network promotion that
21 we have been talking about of encouraging viewers to
22 watch the programming?

1 A For decades now, networks have sometimes
2 created fall campaigns which are of a generic nature,
3 which just recapitulate all of the fun elements that
4 make the network the network and why viewers should
5 stick with one network or another.

6 This sort of a generic campaign, which may
7 have a tag line like "Proud as a peacock" or something
8 of that sort has somewhat fallen out of favor in the
9 last couple of years thinking that you're better off
10 using that limited precious air time to promoting a
11 single or specific show or a broadcast event, rather
12 than just that good residual feeling about the network
13 as a whole.

14 But at the annual affiliate convention,
15 where the fall schedule is revealed to the stations
16 and where the promotion campaigns are sold to the
17 stations or hyped to the stations, you see things like
18 that and showing how the local station can tie into
19 the network graphics and look. And this is something
20 that the network greatly encourages.

21 Local stations have a lot more avail time
22 than the networks do. And you would want the station

1 to tie into the network theme, the network identity
2 based on the shows that make the network special and
3 popular so you can build in the local shows to fit as
4 part of that.

5 Q I'd like to ask you about a particular
6 part of this. At the end of that promotion, did you
7 hear them say, "Via satellite"?

8 A Yeah. I saw that snipe at the end.

9 Q And if you were a New York broadcast
10 affiliate transmitting over the air in the New York
11 DMA, would you typically promote yourself as being
12 delivered via satellite?

13 A What I'm not clear on, is this something
14 which is only seen in satellite homes or is it seen in
15 all? That "Via satellite," would it be seen in cable
16 homes that were not getting satellite transmission or
17 in homes that are just getting the signal off the
18 antenna?

19 MR. OSSOLA: I think the witness' question
20 provides me an opening. To the extent that Mr. Glist
21 wants to use this as an example and ask the witness
22 questions, I mean, obviously it's fine.

1 He seems now to be suggesting that this
2 tape -- and I don't now who created it; that hasn't
3 been established, and this witness can't establish it
4 -- is something that was seen or shown by somebody,
5 actually shown. And I think that's improper.

6 I think using it as an example to say,
7 "What was this kind of thing?" or "Do you recognize
8 it?" is fine. But I think he stepped over the line as
9 to the proper use of something like this.

10 MR. GLIST: I am not trying to admit this
11 tape through this witness. I am trying to elicit from
12 him based on his expertise and understanding as to
13 whether a satellite tag on such a promotion would be
14 normal for a local affiliate promoting itself in some
15 DMA or whether it would indicate that it was directing
16 itself to a satellite audience.

17 If we have reached the limits of his
18 knowledge, we have reached the limits of his
19 knowledge, but --

20 MR. OSSOLA: I am not objecting on the
21 basis of trying to introduce it. I'm objecting to
22 your use of it. I think you're predicating that

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1 question on that this actually happened.

2 I don't know where that reference to the
3 satellite feed came from, and neither does the
4 witness. I don't know how you created that exhibit or
5 whether it was pulled off air.

6 I think you're getting into an area that
7 assumes something about this that you haven't
8 established; that is, that it was actually broadcast
9 or it was actually used, was actually sent by
10 satellite feed. I mean, none of those predicates are
11 present.

12 CHAIRMAN GRIFFITH: Mr. Glist?

13 MR. GLIST: The outstanding question that
14 I'm trying to get answered is whether it would be
15 unusual for a network affiliate which is delivered
16 terrestrially to a local DMA to promote itself as via
17 satellite. That's the only question I want to ask
18 about this.

19 If that's too far, please tell me.

20 CHAIRMAN GRIFFITH: Mr. Garrett?

21 MR. GARRETT: I'm sorry, Your Honor. I
22 just had a question. I just wondered: Was this a

1 complete tape? I'm not sure where it was taken from.
2 Is it complete, whatever it is, or is there some
3 editing that was involved in selecting portions?

4 MR. GLIST: I've not played the entire
5 broadcast today, and I'm not offering it as
6 substantive evidence. I am trying to elicit his
7 expert judgment of the typicality of a tag line in a
8 promotion.

9 He is familiar with promotional vehicles.
10 He has testified to them. That's all I'm trying to
11 get from him.

12 MR. OSSOLA: But the basis of that
13 question is that this was actually used in that
14 fashion, and you haven't established that.

15 CHAIRMAN GRIFFITH: Mr. Gulin, go ahead,
16 please.

17 JUDGE GULIN: Mr. Glist, is it possible to
18 simply ask the question without even referencing the
19 videotape?

20 MR. GLIST: I guess I could.

21 JUDGE GULIN: Why don't you just do it
22 that way.

1 MR. GLIST: Okay. Thank you, Judge.

2 BY MR. GLIST:

3 Q Mr. Sternfeld, would it be common for a
4 terrestrial broadcast affiliate to promote itself as
5 a video satellite to its local DMA?

6 A I haven't seen something like this before.
7 I don't know why a station would -- I don't know why
8 a station -- if the station had the technological
9 capability of limiting that snipe that says "Via
10 satellite" and the audio which goes with it to use in
11 satellite subscription homes, I don't know why you
12 would also include that in reception in cable homes,
13 as opposed to having it show up in just the
14 over-the-air analog antenna satellite distribution.

15 I can't for the life of me think of why a
16 station would promote that unless they had some
17 special deal going with the satellite broadcaster
18 which I have no knowledge of.

19 MR. GLIST: Okay. I'll move on to another
20 area.

21 CHAIRMAN GRIFFITH: All right

22 BY MR. GLIST:

1 Q Do you know if the commercial networks
2 offer local advertising availabilities to satellite
3 carriers to put into network signals?

4 A Network commercial time being made
5 available to satellite carriers?

6 Q Yes.

7 A I've never heard of that.

8 Q You testified on direct that the broadcast
9 network arrangement is almost 100 percent
10 advertiser-supported. Did I understand that
11 correctly?

12 A Pretty nearly, yes.

13 Q And the broadcast day is arranged
14 vertically, if you will. You start at the beginning
15 and you flow your audience down. You try to keep them
16 on that single channel?

17 A As much as we can.

18 Q Now, you're familiar with the advertising
19 market in which you're selling this time?

20 A Correct.

21 Q Do you think that there is enough
22 advertiser support to sustain 100 percent

1 advertiser-supported channels?

2 A To support 100? Not mass appeal,
3 high-quality broadcast networks like we have right
4 now. We have seen the growth from three to four with
5 Fox to five and six with WB and UPN.

6 Those are partial services. They don't
7 program 22 hours. We can -- prime time Fox only
8 broadcasts 15 hours. And they're just beginning to
9 add a fledgling new service, and they have a little
10 but of sports as well. But they don't exist in
11 daytime or Saturday. They're a partial network in
12 terms of the conventional sense of ABC, CBS, and NBC.

13 It depends on how big and how pricey the
14 commercial networks are. I mean, our advertising
15 price for 30-second spot is substantially different
16 than the price for 30-second spot on Nickelodeon, for
17 instance, which is at 67 percent coverage, a network
18 of some sort.

19 So if you ask the question, "A hundred
20 networks?"; well, if a network could live with getting
21 \$10 a spot, the answer is theoretically there's no
22 limit.

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1 Q But you mentioned Nickelodeon. So you're
2 obviously familiar with how basic cable networks are
3 organized.

4 A Correct, yes.

5 Q So is it fair to say that they're
6 partially advertiser-supported and partially supported
7 by subscription revenue?

8 A Some of the better known ones are, yes.

9 Q ABC actually participates in some degree
10 in that basic cable network world, doesn't it?

11 A The ABC Company has interests in basic
12 cable networks.

13 Q Such as ESPN?

14 A Correct.

15 Q ESPN-2?

16 A Correct.

17 Q Are you familiar with the cable network
18 ownership interests of the other commercial networks?

19 A I know that NBC has interests in MS-NBC,
20 CNBC, a partial interest in A&E. I don't know if they
21 have any others. I know CBS is about to launch "Eye
22 on People." I don't know that they have any others.

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1 And, of course, ABC, in addition to ESPN and ESPN-2,
2 has interests in Lifetime, obviously now through our
3 parent company the Disney Channel, which is not
4 advertiser-supported. And we also have a piece of
5 A&E. There may be others. Those are the only ones
6 I'm familiar with.

7 Q Are you familiar at all with CBS' recent
8 acquisition of TNN and Country Music?

9 A I've heard of those two, yes.

10 Q Do you know whether or not CBS acquired
11 those or have you just heard of it?

12 A Yeah. I heard about that. I don't know
13 that the deal has gone through, but my impression is
14 there was some announcement about Gaylord and the TNN
15 network.

16 Q Gaylord is the?

17 A The parent company.

18 Q The parent company of those two networks?

19 Now, is it your understanding that these
20 basic cable networks are carried in packages of cable
21 programming to the cable subscribers?

22 A My knowledge is limited to what my cable

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1 company charges me.

2 Q Do you subscribe to a tier of service that
3 includes a group of basic cable nets?

4 A It does seem to me as I try to figure out
5 my monthly bill that there are bundles and levels of
6 commitment which group together a number of cable
7 networks.

8 Q Does your cable company offer something
9 called a broadcast basic tier that just has the
10 broadcast signals?

11 A There's a basic package. I wouldn't swear
12 that I know what the basic package is, though.

13 Q But do you subscribe to an upper tier that
14 picks up cable networks?

15 A I get a lot, but it's a crappy cable
16 system. I don't think I get enough cable networks,
17 and I only have a few pay cable systems. So it's
18 really a lousy system.

19 MR. OSSOLA: I'd suggest to Mr. Glist that
20 his own personal cable network arrangements maybe
21 aren't relevant.

22 (Laughter.)

1 MR. GLIST: I'm not going any further. At
2 least he's not a satellite customer.

3 THE WITNESS: If you have any influence
4 and can get me a better cable service --

5 MR. GLIST: See me afterwards.

6 BY MR. GLIST:

7 Q You testified that local broadcast
8 affiliates spend money in marketing promoting brand
9 identification and so forth; correct?

10 A Correct.

11 Q In preparing your testimony, did you look
12 at all at what the satellite carrier industry does in
13 that regard?

14 A No.

15 Q So you don't really know whether they
16 spend advertising or marketing or branding?

17 A I have no idea.

18 CHAIRMAN GRIFFITH: Yes?

19 MS. WOODS: Sorry. Mr. Glist is sort of
20 trailing out a bit in his questions back here, and we
21 can't really hear him.

22 MR. GLIST: I'll try to keep my voice up.

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1 CHAIRMAN GRIFFITH: Thank you.

2 BY MR. GLIST:

3 Q You also testified to some extent on the
4 costs that local broadcast affiliates incur in their
5 business operations. Is that correct?

6 A Correct.

7 Q Did you do any investigation of the
8 efforts and costs that a satellite carrier might incur
9 in its business operations?

10 A No. I have no idea.

11 Q Do you know how they are organized in any
12 way?

13 A No.

14 Q Do you know how customers obtain satellite
15 dishes for viewing satellite carrier programs?

16 MR. OSSOLA: I'll object at this point.
17 This is beyond the scope of direct. We did not get
18 into in his direct testimony these matters.

19 MR. GLIST: Actually, the testimony quite
20 clearly unfavorably compares satellite carrier
21 activities to local broadcast affiliates.

22 MR. OSSOLA: I'm directing my objection to

1 your question, which we did not get into the details
2 of the arrangements that you're now inquiring about.

3 BY MR. GLIST:

4 Q Did you --

5 CHAIRMAN GRIFFITH: Do you want us to rule
6 on that first?

7 MR. GLIST: Yes, sir.

8 MR. OSSOLA: I would.

9 CHAIRMAN GRIFFITH: The objection is
10 overruled. I think it's in the scope of the written
11 testimony.

12 BY MR. GLIST:

13 Q Do you know how the satellite customers
14 obtain dishes to receive their programming?

15 A What I know is limited to the ads I've
16 seen in local newspapers. There's a store you go to
17 and come home with a dish.

18 Q When a broadcast affiliate produces local
19 news, is it fair to say that that local news
20 production is directed to the local DMA?

21 A Correct.

22 Q Do you think that it has a great deal of

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1 interest outside of that DMA?

2 A Occasionally there's a little bit of
3 interest. I know that the network operates an
4 affiliate news service, which is basically a
5 cooperative among our stations enabling stations in,
6 for instance, hypothetically Virginia to transmit
7 stories in stations in Illinois if this is a story
8 that is of interest in one territory or the other so
9 that they can share cooperatively what they're each
10 producing on a daily basis.

11 We feed this out to the stations, who can
12 pick this up. For my first part, news is produced at
13 the local level with an eye towards what's happening
14 in the community. And, of course, community interest
15 may include what's going on in the nation, what's
16 going on in the world.

17 Q Do you think that a satellite customer in
18 Arizona would be likely to follow the local news from
19 a Raleigh-Durham network affiliate?

20 A Can't imagine why.

21 Q When the network affiliates with
22 broadcasters, I understand that there is a degree of

1 exclusivity that is given to the local affiliate. Is
2 that correct?

3 A As I understand it, exclusivity would
4 probably pertain to your question in two ways. We
5 license programs, entertainment programs, for
6 instance, from studios which are exclusive to us for
7 broadcast on our local stations. And so yes, there is
8 that exclusivity.

9 But also at the same time the network
10 signal is exclusive to that station in their market so
11 that you can't import the identical thing to their
12 market without violating our agreement.

13 Q Because, again, you're trying to work out
14 an arrangement in which you pull viewers to that
15 particular channel. Is that the idea?

16 A Correct.

17 Q And that's part of the network affiliate
18 relationship?

19 A Right.

20 Q Are you familiar with the term
21 "repurposing"?

22 A No.

1 Q Do you know whether there has been any
2 discussion among ABC affiliates and the network over
3 the use of ABC product and other services?

4 A There's been some discussion, I guess, as
5 each of the networks has contemplated the creation of
6 new cable networks, which, in whole or in part, might
7 reuse network product in some other fashion. I know
8 that affiliated stations have expressed their
9 disapproval of seeing product which is unique to the
10 network showing up in a cable service in some other
11 context.

12 And I know in the case of ABC, they
13 figured that since they add value to the news product
14 and the entertainment -- to the network signal, that,
15 at the very least, they have equity in these ventures.
16 And we, in fact, have established a co-venture company
17 with our affiliates so that they can be equity
18 partners in such projects where we see a validity in
19 that logic.

20 Q So ABC would, your word was, reuse some of
21 the ABC product in other networks, a basic cable
22 network, for example?

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1 A Hypothetically, yes.

2 Q Hypothetically. You testified orally that
3 you're also familiar with the operations of the other
4 commercial networks, I believe.

5 A To some degree, yes.

6 Q Are you familiar with NBC's decision
7 during the NBA final floor to encourage viewers of
8 those games to turn to MS-NBC for post-game coverage?

9 A Yes.

10 Q Can you tell what the reaction of the
11 affiliate community was?

12 A The affiliates were not very happy with
13 that. They basically see themselves as being in
14 competition with viewership defecting to a cable
15 service in which the network has a interest.

16 Once again, in their case, they've added
17 value. They're not sharing in the viewership and the
18 viable business called MS-NBC.

19 Q So NBC's judgment was if I'm adding value,
20 it is okay for me to divert some audience from my
21 affiliates?

22 MR. OSSOLA: I'm not sure the witness can

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1 speak to NBC's particular perspective on that
2 particular decision. I don't think that's fair to ask
3 this question.

4 CHAIRMAN GRIFFITH: Do you want to
5 respond?

6 MR. GLIST: He has testified about the
7 exclusive arrangements and the limitations on those.
8 And I'm trying to get a sense of the scope of the
9 business arrangement.

10 MR. OSSOLA: Well, but your question went
11 to the specific decision by NBC. And I think it's not
12 fair to ask an ABC witness that question.

13 CHAIRMAN GRIFFITH: The objection is
14 sustained.

15 BY MR. GLIST:

16 Q Do you know whether the affiliates were
17 concerned about audience diversion to a cable network?

18 A I think it's fair to say from what I've
19 read in the trades that this is an issue that we're
20 just beginning to see the beginnings of. And, yes,
21 affiliates clearly dislike this.

22 Q Are you familiar with NBC's decision to

1 authorize MS-NBC to carry Dateline NBC in the same way
2 that it's broadcast?

3 A Yeah. I just read that this week. Yes,
4 I'm familiar.

5 Q And can you tell me what the affiliate
6 reaction was to that decision?

7 A Extreme displeasure.

8 Q Can you amplify that slightly?

9 A Dateline NBC is for that network a branded
10 product. Dateline NBC is a news magazine which runs
11 three times a week: Tuesday, Wednesday, and Friday.
12 And to the extent that they dilute that brand by
13 recycling product from free network exposure to basic
14 cable, they're diminishing their own marketing slogan,
15 which has been part of their marketing for several
16 years now.

17 Their tag line for a lot of promotions is
18 only on NBC. In other words, this is an exclusive.
19 This is something you can only see here. And this
20 under -- this practice of recycling Dateline stories
21 or updating them to provide another look at them
22 several days later or some period of time later

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1 undercuts that exclusivity and the value which the
2 local stations clearly feel that they have brought to
3 bear and which not only are they not participating,
4 but incremental viewership at NBC to some degree comes
5 at the expense of their own viewership levels.

6 Q Are you familiar at all with NBC's recent
7 announcement to launch a national weather service on
8 satellite?

9 A No. I'm sorry. I hadn't heard that.

10 Q I believe in your testimony on Page 8 you
11 express displeasure that a rerun of Bewitched
12 generates more royalties than the Super Bowl. Do you
13 recall that?

14 A It seems grossly unfair.

15 Q Do you know how royalties are distributed
16 once they're paid in?

17 A Not really.

18 Q So, regardless of the pay-in, there might
19 be something happening within payout with which you're
20 not familiar?

21 A Correct.

22 Q Incidentally, Super Bowl was on Fox,

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1 wasn't it?

2 A This past year, yes.

3 Q Do you know whether Fox has joined in the
4 position of the commercial networks for whom you are
5 testifying?

6 A It's my impression that they are not.

7 Q At Page 12 of your testimony, you speak of
8 the -- I'll just find the line -- carriers profiting
9 from the sales of the networks. Do you recall
10 testifying to that?

11 A Could you read that in more complete?

12 MR. OSSOLA: First paragraph.

13 CHAIRMAN GRIFFITH: Last sentence of the
14 first paragraph, I believe, beginning with "Again."

15 BY MR. GLIST:

16 Q Do you see it, the bottom of the carryover
17 paragraph?

18 A I see it. And your question is?

19 Q My question is: Do you have any knowledge
20 personally of the profits of these carriers, if any?

21 A I think what I'm suggesting here is that
22 if revenues from subscription to satellite TV go to

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1 the carrier companies, here is an expensive and a
2 valuable marketing and promotion process which the
3 networks invest in but don't share in the satellite
4 carriers' revenues from these network-created brands.

5 So I don't know what the profits are.
6 What I'm just saying is it's my impression the
7 networks don't get anything back from those revenues.

8 Q But you're not testifying to profit in any
9 technical way, such as margin above operating income
10 or --

11 A No.

12 Q You also testified on Page 10 at the
13 bottom of your carryover paragraph that the carriers
14 add no creativity or ingenuity to this process, nor do
15 they assume any risk of failure.

16 A Page 10. I see it.

17 Q Do you see that?

18 A Yes.

19 Q I just wanted to ask you a little bit
20 about what you meant by "risk" there. Are you
21 familiar with a recent investment by Murdoch in the
22 satellite business?

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1 A I know there was an announcement made
2 about the possible joining of ASkyB with his News
3 Corporation.

4 Q Do you know whether he is making an
5 investment in that venture?

6 A I know that such a thing was announced,
7 but keep in mind Murdoch makes a lot of announcements.
8 Not all of these deals come to fruition.

9 Q You read "Broadcasting," don't you?

10 A No.

11 Q Don't read "Broadcasting"?

12 A "Variety," "Hollywood Reporter."

13 MR. OSSOLA: He's on the West Coast.

14 (Laughter.)

15 MR. GLIST: Touche.

16 THE WITNESS: "Broadcasting" tends to have
17 very little of the same stuff in it. It has a week
18 later.

19 BY MR. GLIST:

20 Q I would like to show you an article from
21 "Broadcasting" and ask you for your reaction to a
22 sentence. Look at it.

1 CHAIRMAN GRIFFITH: 26X.

2 (Whereupon, the aforementioned
3 document was marked for
4 identification as SBCA Exhibit
5 Number 26X.)

6 BY MR. GLIST:

7 Q You're welcome to read the entire article,
8 but I wanted to ask you a question about the very last
9 paragraph.

10 A In the second page?

11 Q On the second page.

12 A (Perusing document.) Okay.

13 Q To your knowledge, has Mr. Murdoch made a
14 substantial investment in satellite carriage as an
15 industry?

16 A As has been reported here, yes.

17 Q And have you read about such things in
18 "Variety" and the other trades on which you rely?

19 A Correct.

20 Q The closing paragraph that I wanted to ask
21 you about quotes an analyst named Curt Alexander of
22 Labor Research as saying "He," Mr. Murdoch, "'lost a

1 ton of money in Europe on BSkyB. He's losing carloads
2 of money with JSkyB. He's going to lose carloads of
3 money here if and when he ever does turn a profit,'
4 said Alexander. 'The guy's got money, and he's
5 showing a willingness to take incredible risks to
6 lever up in pursuit of prosperity. It has all worked
7 out for him, but this is a very risky endeavor in my
8 opinion. We don't know what his puke point is.'"

9 I wanted to ask you whether this reflects
10 an assessment of risk in the satellite carriage
11 industry that is different from the one that you
12 expressed.

13 A I have two reactions. One is that in my
14 written testimony here, by saying that he adds no
15 creativity or ingenuity to this process or assuming
16 the risk of failure, I'm clearly talking about the
17 networks' failure, wherein I alluded earlier today to
18 the idea that we could invest millions in advertising
19 promotion of a new show in which we have invested,
20 again, millions, only to find that, despite all of our
21 best intentions and all of our research and our
22 ingenuity and art and scheduling, that a show would

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1 fail in its initial telecast and have to be pulled and
2 canceled on the spot, representing a loss to the
3 millions. That's our risk of failure.

4 The notion that is conveyed here is one of
5 somebody saying, "Well, Katherine Graham is publishing
6 the Washington Post. If I just Xeroxed the newspaper
7 every day and I distribute it on street corners and
8 sell it for 50 cents, what's wrong with that
9 business?" That would be a good analogy.

10 What you're alluding to in this article
11 here is the notion that there's a lot of technology
12 and a lot of expense in the start-up of a satellite
13 business.

14 Anyone who has followed Murdoch for years
15 knows a couple of things. He will throw money around
16 like a wild man in order to gain immediate footprint
17 in an industry or a territory or market that interests
18 him. Whether it's a good business decision, whether
19 he has made good deals, time has yet to show.

20 And, in fact, if you look at the stock
21 price of the News Corporation on Wall Street, you'll
22 see that nobody really thinks that he knows what he's

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1 doing. The stock has been stagnant at around \$20 a
2 share over a period when the S&P and the Dow Jones
3 have gone up over 60 percent in the last 2 years.

4 So it's not clear that anyone really
5 believes that what he's doing is a long-term good
6 business strategy. That may be unique to Murdoch's
7 approach to the deal-making here, where he throws
8 around 500 million here and 500 million there in order
9 to acquire an interest in stations to add to his
10 distribution lineup of affiliates or to spend an extra
11 billion dollars over and above what any reasonable
12 negotiation would have led to for the acquisition of
13 the rights to national football.

14 And here this summation seems to me quite
15 consistent with a lot of his other business decisions.

16 Q When you just offered me an analogy
17 between the Xeroxing the Washington Post and the
18 satellite carrier business, were you saying that
19 satellite carriers engage in no other activities other
20 than copying somebody else's product?

21 A In terms of the duplication of the network
22 signal, yes, I think that's true.

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1 Q But in preparing your testimony, you made
2 no investigation of a market or package. Is that
3 correct?

4 A That's correct.

5 Q And you don't really have an understanding
6 of the economics of that business?

7 A True.

8 Q But you're proud of your own business?

9 MR. GLIST: That's all I have for you,
10 sir.

11 CHAIRMAN GRIFFITH: All right. Any other
12 cross-examination? Who wants to go first?

13 Can we take a five-minute break? It's
14 been an hour and a half. Just five minutes, please.

15 (Whereupon, the foregoing matter went off
16 the record at 3:27 p.m. and went back on
17 the record at 3:35 p.m.)

18 CHAIRMAN GRIFFITH: Is Mr. Glist finished?

19 MR. GLIST: I am, sir.

20 CHAIRMAN GRIFFITH: All right. There are
21 other recross-examinations. Okay. Come forth,
22 please, Ms. Herrera.

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1 MS. HERRERA: It's Mr. Stewart.

2 CHAIRMAN GRIFFITH: Oh, it's Mr. Stewart?

3 Okay. And, Ms. Woods, you wanted to --

4 MR. OSSOLA: I am obligated and should
5 have done this at the outset. I would like to make a
6 correction on Page 3 of Mr. Sternfeld's direct
7 testimony, Footnote 2. There is a reference to PBS
8 that should not have been made. So if you will simply
9 strike "PBS" or "and PBS" and add "and" before "Fox."

10 That was our error. Ms. Woods pointed it
11 out. And I apologize.

12 CHAIRMAN GRIFFITH: Okay. So amended.

13 Mr. Stewart?

14 MR. STEWART: Thank you, Your Honor.

15 CHAIRMAN GRIFFITH: Yes.

16 MR. STEWART: My name is John Stewart, Mr.
17 Sternfeld. I'm here representing the Broadcaster
18 Claimants Group.

19 CROSS-EXAMINATION

20 BY MR. STEWART:

21 Q Mr. Glist asked you a question about
22 whether you thought that a satellite subscriber in

1 Arizona would be interested in following local events
2 from the Raleigh-Durham station. Do you recall that?

3 A Correct.

4 Q Your answer was to the effect that you
5 don't know what the reason might be for that. Is that
6 right?

7 A Correct.

8 Q Now, would your answer be different if it
9 were a Los Angeles station being retransmitted in
10 Arizona to a satellite

11 subscriber? Might it be that an Arizona subscriber
12 would be interested in Los Angeles area news?

13 A I can't see why.

14 Q Well, is the Los Angeles area market a
15 market that has a focus on the entertainment industry?

16 A It's true that there probably are more
17 stories about film and TV capital of the country
18 there. And I guess to the degree that shows up in Los
19 Angeles station, news broadcasts could be of interest
20 to some degree elsewhere around the country.

21 Q Do you know how many satellite subscribers
22 in Arizona subscribe to or receive WRAL from

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1 Raleigh-Durham, North Carolina?

2 A No, I don't.

3 Q What is your answer?

4 A No, I don't.

5 Q Do you know if there are any?

6 A I have no idea.

7 Q I want to hand you an exhibit that's been
8 entered into evidence in this case as Exhibit 3 of Mr.
9 Graff's testimony. Mr. Graff is a Program Director at
10 WPIX who has appeared as a witness on behalf of the
11 Broadcaster Claimants Group the other day.

12 MR. SEIVER: I'm sorry. Is this something
13 that's already in, Mr. Stewart?

14 CHAIRMAN GRIFFITH: Yes. Under the rules
15 of the CARP, I believe all direct case exhibits are
16 entered without separate motion.

17 BY MR. STEWART:

18 Q And would you turn to the second page of
19 that? Mr. Graff explained that this was a copy of the
20 page on the Web site for Prime Time 24, which is one
21 of the satellite carriers here.

22 And, actually, the next four pages, or

1 last four pages, of this exhibit are copies of
2 material on that Web site first for the PBS service
3 and then the last two pages for the C-band service.
4 Do you see that? It's identified maybe in the top of
5 each --

6 A I see them. Okay.

7 Q Now, back to that second page of the
8 exhibit, which is headed "Network Programming." Do
9 you see that?

10 A Right.

11 Q Do you see there's a listing for WRAL
12 there?

13 A Right.

14 Q Now, on WRAL are CBS network programs. Is
15 that right?

16 A Evidently so. If you're asking me if WRAL
17 carries CBS programs, the answer is yes. And I assume
18 that when they're picked up and fed by satellite to
19 some other market, they stay.

20 Q And is it the case that CBS network
21 programs are carried on CBS affiliates throughout the
22 country?

1 A To the extent that they're all carried,
2 yes. I think, actually, WRAL is an owned station,
3 maybe not.

4 Q Now, in addition to the network, the CBS
5 network, programs on WRAL or, for that matter, any
6 other network affiliate, what kinds of programs would
7 one see?

8 A On any local affiliate, you would expect
9 to see shows, talk shows, like Oprah Winfrey, Rosie
10 O'Donnell, or prime access half-hour strip shows, like
11 Entertainment Tonight or Inside Edition, in addition
12 to the locally produced news programs.

13 Q The first group in addition to the locally
14 produced news programs are syndicated programs that
15 the affiliate, the station itself, selects for
16 broadcast on the station. Is that right?

17 A Correct.

18 Q So that the station makes, in addition to
19 the CBS network programming in this case, a package
20 that includes the syndicated programs it selects and
21 the locally produced news programs. Is that right?

22 A Correct.

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1 Q Would you read this description here after
2 "WRAL"?

3 A "Syndicated favorites include Inside
4 Edition, Extra, Regis and Kathy Lee, and The Price is
5 Right, perspective and charm from a fast-growing
6 American city."

7 Q Do you think that "perspective and charm
8 from a fast-growing American city" comes from the
9 station-produced news programs on WRAL or from the
10 syndicated programs or the network programs?

11 A I'll guess that it's from the locally
12 produced news and public affairs shows.

13 Q Okay.

14 MR. GLIST: Objection. If it's a guess,
15 it's no evidence.

16 CHAIRMAN GRIFFITH: The objection is
17 sustained.

18 BY MR. STEWART:

19 Q Would the syndicated programs that appear
20 on WRAL be any different from the same syndicated
21 programs that appear on any other network affiliate or
22 station in any other city?

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1 A On that same date? Probably not.

2 Q The same programs are the same throughout
3 the country; correct?

4 A I believe so.

5 Q CBS network programs are the same on
6 network affiliates, CBS network affiliates, throughout
7 the country; right?

8 A Should be.

9 Q The only difference between these programs
10 on WRAL and programs on a different network affiliate
11 are the station-produced programs. Isn't that right?

12 A Correct.

13 Q Now, are you aware that Prime Time 24 --
14 are any of the satellite carriers required to carry
15 WRAL, as opposed to some other CBS affiliate?

16 A In the Raleigh market itself --

17 Q No.

18 A -- or at someplace else?

19 Q Anywhere in the country.

20 A I'm not an expert, but it's my impression
21 -- I don't know that they have an obligation to do
22 anything.

1 Q They can pick any CBS affiliate that they
2 wish. Isn't that correct?

3 MR. GLIST: Objection. He just testified
4 he doesn't know.

5 CHAIRMAN GRIFFITH: If you know, sir.

6 THE WITNESS: No, I don't know.

7 BY MR. STEWART:

8 Q If it were the case, I'm going to ask you
9 to assume with me that under the compulsory license,
10 which is Section 119 of the law that we're all here in
11 order to implement, satellite carriers may select any
12 CBS affiliate they wish?

13 A Again, I don't consider myself expert. My
14 impression is that must carry pertains to cable and
15 local affiliates. How it involves satellite, too, I
16 have no idea.

17 Q I wasn't talking about must carry. I said
18 I'm asking you to assume with me that under the law
19 that we're here applying, there's no compulsion on the
20 satellite carriers to carry any stations or any
21 particular station? Do you have that assumption in
22 mind?

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1 A I guess I do.

2 Q All right. Now, would you draw any
3 conclusions, then, given that assumption, from the
4 fact that they select and promote WRAL, instead of
5 other CBS affiliates?

6 MR. GLIST: Objection. I really think
7 that this is speculation that we're in now.

8 MR. STEWART: Your Honor?

9 CHAIRMAN GRIFFITH: Yes?

10 MR. STEWART: This line of questions arose
11 solely from the question that Mr. Glist asked this
12 witness, which is whether he thought that a satellite
13 subscriber in Arizona would be interested in the local
14 news on WRAL.

15 CHAIRMAN GRIFFITH: The objection is
16 overruled. You can answer if you know or if you do
17 not know, you can so state.

18 THE WITNESS: And your question again is?

19 BY MR. STEWART:

20 Q Given the assumption that they can pick
21 any CBS affiliate and this document, which indicates
22 that they have selected and promoted WRAL, would you

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1 draw any conclusions from that about the value of the
2 station-produced programs on WRAL?

3 A The value of the local station programs
4 from WRAL in satellite terms in Arizona I would think
5 would be marginal.

6 Q And would it surprise you that they
7 selected WRAL, as opposed to an Arizona CBS affiliate,
8 for example?

9 A I don't know if the choice is totally
10 arbitrary.

11 Q Do you think that they selected WRAL for
12 a particular reason?

13 MR. GLIST: Your Honor, this is complete
14 speculation by a witness who has been exhausted --

15 MR. STEWART: I withdraw the question.

16 CHAIRMAN GRIFFITH: All night. Mr.
17 Garrett?

18 MR. GARRETT: Good afternoon, Mr.
19 Sternfeld. I'm Bob Garrett. I represent the Joint
20 Sports Claimants.

21 CROSS-EXAMINATION

22 BY MR. GARRETT:

1 Q Let me just ask you to turn to SBCA
2 Exhibit 26X, please. Yes, that's the article, ASkyB.
3 Do you have that before you?

4 A Yes, I do.

5 Q I take it, Mr. Sternfeld, that you have no
6 personal knowledge as to whether any of the financial
7 data reported in SBCA Exhibit 26X is accurate?

8 A Again, I saw this for the first time a few
9 minutes ago. I haven't really read this, but if you
10 ask me if I tend to believe what I read in print,
11 sure.

12 Q That's very admirable.

13 MR. OSSOLA: That's not what I thought he
14 would say.

15 (Laughter.)

16 MR. GARRETT: If I had known that, I would
17 have brought a few more exhibits.

18 (Laughter.)

19 THE WITNESS: You're publishing magazines,
20 too.

21 BY MR. GARRETT:

22 Q My question was whether you had any

1 personal knowledge as to the accuracy or inaccuracy of
2 the various pieces of financial data set forth in SBCA
3 Exhibit 26X.

4 A No, I have no personal knowledge.

5 Q Let me ask you just to turn to Page 2 of
6 that exhibit and direct your attention to the second
7 full paragraph. Do you see the one beginning with
8 "One analyst's"?

9 A Yes.

10 Q Okay. And that reads, "One analyst's
11 preliminary model shows Sky having \$23.6 million
12 negative EBITRDA earnings before interest, taxes,
13 depreciation, and amortization in 1998 before
14 reversing course and showing positive cash flow of
15 \$237 million in 1999." Do you see that?

16 A Yes, I do.

17 Q And I take it you have no personal
18 knowledge as to whether or not that particular
19 estimate of a \$237 million cash flow 2 years after
20 commencing operation is accurate?

21 A I have no personal knowledge.

22 BY MR. GARRETT:

1 Q Now, ASkyB is basically copyrighted
2 programming. Is that a fair characterization?

3 A I'm not familiar with their plans for this
4 venture.

5 MS. DONOGHUE: Your Honor, I'd like to
6 object to this line of questioning. Mr. Garrett is
7 putting information into the record through a witness
8 who has testified to the fact that he has no knowledge
9 of what Mr. Garrett is asking about.

10 JUDGE GULIN: You're moving to strike the
11 last answer?

12 CHAIRMAN GRIFFITH: His last answer was --

13 MS. DONOGHUE: Yes. I move to strike.
14 The question simply served to get information into
15 evidence through a witness who knows nothing about it.
16 So, rather than striking the answer, I'd like to
17 strike the question.

18 MR. GARRETT: Your Honor, there's nothing
19 in evidence here about ASkyB. I'm not trying to get
20 into evidence any of these numbers. I think Mr.
21 Sternfeld has made it clear that he has no knowledge.

22 My point is simply that counsel for SBCA

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1 was allowed to question him about all of these various
2 costs. I mean, all of the testimony he gave before
3 about these costs, he has no personal knowledge of
4 either.

5 I think it's simply fair to point out that
6 there were some other data that he doesn't know
7 anything about as well.

8 CHAIRMAN GRIFFITH: I don't think there
9 was any objection to the testimony he gave with
10 respect to the other questions concerning cost. She
11 objects to it.

12 MS. DONOGHUE: And, actually, if that's a
13 concern, Your Honor, I also plan to make a motion to
14 strike the witness' last comments about Mr. Murdoch as
15 irrelevant and non-responsive to the question. And
16 speaking only in a prejudicial manner about someone
17 who has nothing to do with the proceeding and is not
18 a party to this. I planned to make that motion when
19 Mr. Garrett was finished.

20 MR. OSSOLA: If that's a motion, could I
21 address it? If it isn't, I will --

22 MS. DONOGHUE: I will more formally

1 present it when Mr. Garrett is finished, but if you're
2 complaint is about what was entered before, I just
3 wanted to let you know.

4 CHAIRMAN GRIFFITH: The objection is
5 sustained. And I think we simply want to point out
6 that there was no objection to the other questions
7 concerning the content of the article by Mr. Glist,
8 the questions he made. There is an objection now.
9 And the objection is sustained.

10 MR. GARRETT: May I just have a
11 clarification, Your Honor? The objection is sustained
12 as to my last question?

13 CHAIRMAN GRIFFITH: Your last question,
14 yes.

15 MR. GARRETT: My recollection of that
16 question was that --

17 CHAIRMAN GRIFFITH: He has any personal
18 knowledge --

19 MR. GARRETT: No. I thought the question
20 was whether ASkyB and Mr. Murdoch were basically in
21 the business of selling copyrighted programming.

22 CHAIRMAN GRIFFITH: Yes. And you object

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1 to that?

2 MS. DONOGHUE: Correct. The witness has
3 already testified he has no knowledge of that.

4 CHAIRMAN GRIFFITH: The objection is
5 sustained. The witness did respond, if my
6 recollection is correct, and said he had no knowledge
7 of that.

8 THE WITNESS: Correct.

9 MR. GARRETT: Okay.

10 CHAIRMAN GRIFFITH: The objection is
11 sustained. And in view of that, the response is
12 stricken.

13 MR. GARRETT: The response about whether
14 or not ASkyB is in the business of selling copyrighted
15 programming?

16 CHAIRMAN GRIFFITH: Yes.

17 MR. GARRETT: I have no further questions.
18 Thank you.

19 CHAIRMAN GRIFFITH: Any other
20 cross-examination? Any redirect?

21 MR. OSSOLA: I have a few.

22 CHAIRMAN GRIFFITH: Okay.

REDIRECT EXAMINATION

BY MR. OSSOLA:

Q Mr. Sternfeld, what happens to a successful network show over time?

A In my experience, when a -- let's say a sitcom, for instance. When a sitcom becomes quite successful, the network and the studio that licenses the show to us will renegotiate the terms.

And I know in a number of instances, -- and I think it's a general truth -- if you could plot on a curve over time the profit generation from a show, you'd see that initially when the show begins its life and the license fee is low, the profits tend to grow. And as you go through renegotiations, the profit contribution sort of gets back down to the zero point.

In the case of long-running hits, -- shows like Roseanne come to mind -- eventually you're in the red. Your license fees exceed your revenues for the show in that time period, even though the ratings might still be somewhat respectable and if the ratings sustain over enough years, you may ultimately give

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1 back all of the profit the show's ever generated and
2 be at a break-even after ten years, which doesn't even
3 include the overhead, which every time period has to
4 offset.

5 So the answer is successful shows become
6 prohibitively expensive if they become successful and
7 stay that way for a long time.

8 Q The license fees to which you refer are to
9 the network, the cost of acquiring or maintaining the
10 rights to the programming?

11 A Right, the license fee paid out to just
12 take two broadcasts of a show within a season.

13 Q Mr. Glist asked you about the payments
14 that the networks make to the affiliated stations. Do
15 you recall that?

16 A Yes.

17 Q Do the affiliated stations give any value
18 back to the network?

19 A Oh, sure. Again, all viewing is done on
20 a local basis. A viewer in Omaha or a viewer in
21 Raleigh only knows that they're watching that channel
22 number, that station's call letters. And what, in

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1 effect, the local station does is tie the network's
2 programs, hopefully their successful programs, to the
3 local news talent which has a community profile.

4 And the station through community service
5 and a commitment to news and their marketing in that
6 station have an identity and a profile which throws
7 off value to the network so that, in effect, whether
8 it's the cross-promotion and you see a local news
9 anchor in a promotion shaking hands with Dan Rather on
10 the set or talking to each other actually
11 interactively on air, it's pretty clear that there is
12 a seamless programming identity established between
13 the local station both through graphics and marketing
14 as well as through the audience flow of one successful
15 program, whether it be local or network, into the
16 other's time periods.

17 Q Do the affiliates add content, then, to
18 the network signal?

19 A Absolutely.

20 Q Do the satellite carriers add content to
21 the network signal?

22 A Not to my knowledge.

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1 Q Mr. Glist asked you a question about the
2 Dateline NBC. Do you recall that?

3 A Yes, I do.

4 Q Who owns the rights to Dateline NBC?

5 A Dateline NBC is a copyrighted show that
6 belongs to that network, NBC.

7 Q What is your understanding as to what NBC
8 may do as a result of that ownership?

9 A Well, they have exclusive ownership to NBC
10 news product that entitles them to do anything with
11 the show after it's broadcast on the network,
12 including using this product in our archival footage,
13 which could be sold to third parties, using it in
14 subsequent specials or in cable network usage,
15 companies which they own or even companies which
16 don't.

17 I know in some cases there are ABC news
18 programs being developed and produced which will be
19 then licensed to other entities.

20 Q And that instance is up to ABC to decide
21 whether to license?

22 A Correct.

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1 Q Is it up to ABC to decide on what terms it
2 will be licensed?

3 A Correct.

4 Q Is it your experience that the decision
5 whether to license the rights to programming and, if
6 so, on what basis are important business decisions?

7 A Yes, it's important in the sense that as
8 our profit margins begin to shrink a little bit, we
9 find new ways in which to generate revenue streams
10 from product which we control.

11 MR. OSSOLA: I have nothing further.
12 Thank you.

13 CHAIRMAN GRIFFITH: All right. Is there
14 anything further for this witness?

15 MR. GLIST: No, sir.

16 CHAIRMAN GRIFFITH: All right. Mr.
17 Sternfeld, thank you very much, sir. You may step
18 down. You're free to go.

19 THE WITNESS: Thank you, sir, appreciate
20 it.

21 (Whereupon, the witness was excused.)

22 CHAIRMAN GRIFFITH: Yes?

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1 MS. DONOGHUE: Your Honor, if I may, I'd
2 like to speak to the issue that I referred to before.

3 CHAIRMAN GRIFFITH: All right.

4 MS. DONOGHUE: I apologize for the belated
5 nature of this, but I would like to -- at the end of
6 his testimony in his prior examination by Mr. Glist,
7 Mr. Sternfeld veered off in his answer at the very end
8 of one of the questions. I think he characterized it
9 as a personal attack against Mr. Murdoch, an attack
10 professionally against Mr. Murdoch, in a manner that
11 was not responsive to the question.

12 It wasn't relevant, especially considering
13 that Mr. Murdoch is not a party to these proceedings.
14 So I would like to make a motion to strike that
15 portion of his response from the record.

16 CHAIRMAN GRIFFITH: All right. Mr. Glist?

17 MR. GLIST: I found his answer completely
18 responsive. I had presented him with an assessment by
19 another analyst of risk in the industry, and he
20 explained his view of the risks that were undertaken
21 by Mr. Murdoch as a participant in this very industry.
22 He's animated, but he's honest. And it deserves to be

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1 in the record.

2 I found it relevant. I found it
3 responsive. And I asked the question.

4 MS. DONOGHUE: I'd just like to point out,
5 Your Honor, I think it went beyond analyzing the risks
6 that are being taken in this industry, analyzing risks
7 that the witness feels Mr. Murdoch has taken in other
8 industries. And so I believe it did go beyond the
9 scope of the question.

10 CHAIRMAN GRIFFITH: All right Your motion
11 is taken under advisement temporarily until we can
12 read the transcript and see the response, at which
13 time we will rule and advise you.

14 MS. DONOGHUE: Thank you.

15 CHAIRMAN GRIFFITH: All right? Anyone
16 else have any comments on it?

17 MS. WOODS: Your Honor, Michele Woods for
18 Public Television.

19 I would just note that it's sort of a
20 troubling precedent to allow people to stand up and
21 try to strike material this far after the answer has
22 been given when we don't all have it in mind.

1 In fact, normally in the course, objection
2 should be made to the question if unexpected materials
3 contained in the answer of an immediate question to
4 strike I believe would be appropriate, but at this
5 point it's very difficult for us all to have the
6 answer in mind.

7 And I really do think the point has passed
8 and that if we start doing this here, there are
9 certainly all kinds of things I'd love to strike from
10 the record that had occurred over the last few days.
11 So it's just a very troubling precedent.

12 MR. GARRETT: I move to strike Mr.
13 Seiver's cross-examination.

14 (Laughter.)

15 MS. WOODS: That's exactly my point.

16 CHAIRMAN GRIFFITH: Your comments in
17 support of Mr. Glist and in opposition to the motion
18 will be given due consideration as we review it.

19 Mr. Garrett, do you join in?

20 MR. GARRETT: Well, I just wondered for
21 clarification: Is it the entire response that you're
22 moving to strike --

1 CHAIRMAN GRIFFITH: No.

2 MR. GARRETT: -- or is it some portion of
3 it?

4 MS. DONOGHUE: No. The portion of the
5 response that began to speak simply to Mr. Murdoch
6 himself and his business practices.

7 CHAIRMAN GRIFFITH: Right.

8 MS. DONOGHUE: I think the first half of
9 the response spoke generally to the satellite venture.
10 I'm not moving to strike that portion.

11 CHAIRMAN GRIFFITH: I understand.

12 MR. GLIST: I would like to add, however,
13 that the witness is gone. And if you were to decide
14 that that would not be responsive to the question I
15 had posed, I assure you I would have followed up with
16 additional questions that would have gotten me into a
17 protected area. It's just too late to do this when
18 the witness is gone.

19 CHAIRMAN GRIFFITH: We'll give that due
20 consideration.

21 All right. Anything else in the way of
22 testimony and evidence?

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1 MR. SEIVER: I thought, Your Honor, that
2 maybe I need so the record is clear to move to strike
3 Mr. Garrett's more recent motion.

4 (Laughter.)

5 CHAIRMAN GRIFFITH: We shall not consider
6 either one of those.

7 I do have a matter concerning Saturday.
8 We are starting at 9:00 o'clock Saturday morning. Mr.
9 Garrett, do you have a question about that?

10 MR. GARRETT: Yes. Can we make this
11 dress-down day?

12 CHAIRMAN GRIFFITH: I intend. Yes, I
13 think we certainly can.

14 MR. GARRETT: We did that at the Saturday
15 sessions the last time. It was the one benefit.

16 CHAIRMAN GRIFFITH: These two gentlemen
17 from out of town have nothing but dark blue suits.

18 (Laughter.)

19 CHAIRMAN GRIFFITH: There is something.
20 I'm not making this up, believe me. We were advised
21 at noon today the bathrooms will be locked. However,
22 we have arranged or the Copyright Office has arranged

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1 for us to use the facility straight down the hall if
2 I'm correct. I think it's Room 403. We'll get the
3 exact number for you on Saturday.

4 Do you have any idea how long we can
5 anticipate we're going to be here on Saturday? It
6 will take four or five hours or --

7 MS. WOODS: Your Honor, it's probably much
8 more up to the satellite carriers as to how much cross
9 they have. Direct I would think would be in the range
10 of an hour.

11 CHAIRMAN GRIFFITH: Okay. This is Ms.
12 McLaughlin; right?

13 MS. WOODS: Yes, that's correct.

14 CHAIRMAN GRIFFITH: I'm not holding you to
15 anything. I think we just want to know.

16 MR. GLIST: If direct is an hour, I think
17 their estimate of 45 is correct at most.

18 CHAIRMAN GRIFFITH: Because the only other
19 eating facility in the building apparently is in the
20 basement of the building, whatever that is. It's some
21 kind of a little thing where you can buy hot dogs and
22 hamburgers and like you see in a mall or something

1 like that.

2 MR. GARRETT: If you think the sixth floor
3 is bad.

4 MR. OSSOLA: We should bring our lunch.

5 CHAIRMAN GRIFFITH: I suggested a panel
6 picnic, and no one picked it up.

7 (Laughter.)

8 CHAIRMAN GRIFFITH: Okay. We'll dress
9 down. We will have a facility open. And we will see
10 you at 9:00 o'clock a.m. on Saturday. All right.
11 Thank you.

12 (Whereupon, the foregoing matter was
13 recessed at 4:05 p.m., to be reconvened
14 on Saturday, March 22, 1997 at 9:30 a.m.)

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CERTIFICATE

This is to certify that the foregoing transcript in
the matter of: Hearing: Satellite Rate Adjustment,
 Docket No. 96-3 CARP-SRA

Before: Library of Congress
Copyright Arbitration Royalty Panel

Date: March 20, 1997

Place: Washington, DC

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
typewriting.

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Copyright Arbitration
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Satellite Rate Adjustment

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